

1895-039 Chancery Causes: Zion Hobbs vs. Exr. of W. D. Jones &c
Lee Co

Chance, Allen, Carmack, James, Gilley, Gilly, Skeen, Bullitt,
McDowell, Yeary

2Plats

CA-Debt

T-Property

To the Honorable W.T. Miller, Judge of the Circuit Court for Lee County, Virginia.

Your orator, Zion Hobbs, will state unto your honor that March 21, 1889, and prior thereto, he was the owner and seized in fee simple of a tract of land situated in Lee County, Virginia, on the North side of Powell's river, containing sixty acres; that a short time before March 21, 1889, one John Gilly took an option on ----- Hyatt's tract of land, which joined your orator's land on the North, to sell; that said Gilly endeavored to sell said Hyatt's land to one William D. Jones, now deceased, and said Jones refused to purchase same because your orator's land lay between said Hyatt's land and Powell's river, cutting said Hyatt's land off from said river; that said Jones refused to purchase said Hyatt's land unless he could buy your orator's land also; that said Gilly, in order that he might be able to make sale of the Hyatt land, came to see if your orator would sell his tract of land; that said Gilly proposed to sell your orator's land for him without charging him commission for making sale of same; that your orator authorized said Gilly to sell his land upon the following terms, to-wit: that said Gilly was not to sell your orator's land for less than \$18.00 per acre and was to sell it for more per acre if he could and, in no event, was said Gilly to have any thing for selling same; and that the agreement authorizing said Gilly to make sale of your orator's land was reduced to writing which said agreement said Gilly took into his possession and now has the same, and your orator now demands said Gilly to produce said writing and file the same with the papers in this cause as part hereof to be marked "Gilly Contract."

Your orator avers that said Gilly sold your orator's land to

said William D. Jones at the price of \$20.00 per acre on the following terms, to-wit, \$200.00 cash, to be paid when your orator made deed to said Jones for said land, and the balance to be paid in five years from March 21, 1889; and your orator avers that on March 21, 1889, your orator and wife conveyed said tract of land to William D. Jones and the said William D. Jones executed to your orator his two promisory notes, one for \$880.00 and the other for \$120.00, due and payable five years after date, one of which notes, to-wit, the \$880.00 note is here herewith filed as part hereof, marked "Largest note". Your orator avers that said Jones delivered the two said notes to said Gilly to be by him delivered to your orator, and the said Gilly delivered the \$880.00 note to your orator but did not and has not, up to this time, delivered the \$120.00 note to your orator, and is now as your orator is informed, claiming to be the owner of said note for commission for making sale of your orator's land.

Your orator avers that said \$120.00 note was made payable to him and that he never endorsed or assigned said note to said Gilly at any time, and that said Gilly wrongfully withholds said note from your orator and should be compelled to file the same with the papers in this cause as part hereof, marked "Smallest note", so your orator can obtain judgement thereon against the estate of said William D. Jones.

Your orator avers that in the deed to William D. Jones he retained a lien upon the tract of land therein conveyed to secure the payment of the two notes aforesaid, a copy of which deed is herewith filed as part hereof, marked "Jones deed".

Your orator will now state that some time after he conveyed said tract of land to said Jones the Louisville & Nashville railroad Company instituted, in the County Court of Lee

County against William D. Jones condemnation proceedings for the purpose of obtaining title for a strip of land through the aforesaid tract of land for its road-bed, and did condemn a strip of land through said tract of land and for said strip of land paid \$378.03 to John R. Gibson, late Clerk of said County Court, and that the Commissioner appointed to ascertain and report, who was entitled to said money, reported that your orator had a lein upon the same and that at the February term ¹⁸⁹⁴ of said County Court said Gibson, late Clerk as aforesaid, by order of said Court, paid your orator, through his attorney, \$373.03, retaining ~~\$500~~ \$5.00 as his commission for receiving and paying out said money, and your orator ^{credited} the \$880.00 note March 21, 1894, with ^{the} \$373.03.

Your orator will further state that after he conveyed said tract of land to said Jones, he had the same surveyed and that said tract of land fell short of the ~~one hundred and sixty~~ acres by 3.6 acres, and a reduction of the purchase money was made for the 3.6 acres at twenty dollars per acre, amounting to \$72.20, which was placed as a credit on the \$880.00 note.

Your orator avers that the sum of \$434.77, part of the \$880.00 note, with interest from March 21, 1894, and the \$120.00 note with interest as aforesaid, amounting to the sum of \$554.77, is yet due to and unpaid to your orator, as purchase money on the aforesaid tract of land, and is now due and payable to your orator.

Your orator will now state that after he conveyed said tract of land to said William D. Jones, the said William D. Jones in the month of July or August, 1890, departed this life, and he devised and bequeathed all his personal and real estate to Catharine B. Jones, his widow, John M. Jones, B. J. Jones, Mary

James, the wife of W.W.James, Nancy E.Allen, the wife of J.C. Allen, W.J.Carmack, Roena Jones, John Jones and Eula Jones, the last three mentioned are infants; and that the last will and testament ^{of} said William D.Jones, deceased, was admitted to probate in the County Court, of Scott County, Virginia, before the institution of this suit, and that said William D.Jones, in his will named and nominated as his executors, John M.Jones, B.D.Jones and J.C.Chance, and that the first two above named refused to qualify as such, and that the said J.C.Chance has qualified as such executor in the States of Virginia and Pennsylvania.

Wherefore your orator prays that J.C.Chance, executor as aforesaid, Catharine B.Jones, John M.Jones, Mary James, W.W. James, Nancy E.Allen, J.C.Allen, W.J.Carmack, B.D.Jones, John Jones, Roena Jones, Eula Jones and John Gilly be made parties defendants to this bill, and be required to answer the same but answer under oath is hereby waived; that a guardian ad litem be appointed for John Jones, Roena Jones and Eula Jones, infants; that proper process may issue; that John Gilly be compelled to deliver, ^{as} above demanded, ~~with the~~ and file with the papers in this cause the \$120.00 note; that your orator recover of the estate of William D.Jones, \$1000.00 with interest from March 21, 1894, subject to the following credit, to-wit, ^{as of march 21, 1894} \$445.23 and his cost in this behalf expended; that the vendors ¹lein retained in said deed be foreclosed and the said tract of land, except the Louisville & Nashville Railroad Company's right-of-way, or so much thereof, as will satisfy your orators debt and cost of this suit, be sold; and that all such other further and general relief as in the premises as may be just and right be granted.

And your orator will ever pray etc.

H.A.W.Skeen, p.q.

Zion Hobbs

La Circuit Court

vs

Petition for Rehearing

J.C. Chance, Exor et al

In Equity

To Hon. W.D. Miller, Judge
of La Circuit Court:

I humbly complain, your
petitioner John Gilly, states unto
your Honor that by decree rendered
in the above styled cause on June
16, 1894, his right to a first lien
on the land in controversy was
denied. He is advised that
error was probably therein com-
mitted, and he therefore petitions
your Honor that before the
sale held under said decree
be confirmed, a rehearing be
granted him, and all proper
and general relief be afforded
him.

And your petitioner will ever
pray.

W.C. McDowell, Jr
For Petitioner

John Gilly
by Counsel

Zion Häbles
vo { Petition
for
Rehearing.
J. C. Chance, Exor et al.

Zion Hobbs

Lee Circuit Court

vs {

In Chancery

J. C. Chance Exr. et al

To Zion Hobbs Esq

Take notice that on the first day of the next term of Lee Circuit Court the undersigned ^{petitioner} will move the Court for a rehearing and correction of error in the decree of June 16. 1874 rendered in the above styled cause. I shall also move that the sale made to you by Commissioner Skeen be set aside and held for naught, that a decree be rendered giving me the first lien on the land in controversy, and all such other and general relief as may be proper.

Respectfully
John Gitty
per Council

Legal Service accepted
Feb 6, 1875 - Zion Hobbs
per W A W Stum
att'y.

Iron Hables
vs { Notice of
Petition for Rehearing
J. C. Chance, Exor et al

H. A. W. Sheen, Attorney,
Office in Sheen Building,
Shawnee Avenue.

Big Stone Gap, Va., 189

Geo Hobbs

v. } Answer of Jas. Renna and Lula Jones
J. C. Chance Exors &c.

The joint and separate answer of Jas Jones, Renna Jones and Lula Jones infants under the age of twenty-one years by J. C. Maynor, their guardian ad litem, assigned to defend them in this suit, to a bill of Complaint exhibited against them and others, in the Circuit Court for the County of Lee, by Geo Hobbs.

The respondents answering to themselves the benefit of all just exceptions to said bill, for answer thereto, or to so much thereof as they are advised that is material they should answer, by their guardian ad litem answers and says: That they are infants of tender years, and by reason of their infancy are incapable of understanding, or taking care of their rights and interest. They, therefore, by their said guardian commend themselves and their rights and interest to the protection of the Court, and pray that no decree may be pronounced which will tend to their prejudice. And having fully answered the said respondents pray to be herein dismissed with their costs &c. J. C. Maynor Guardian ad litem
for John Jones, Lula Jones and Renna Jones

John Robbs
vs } owner of K.C.
 } Mayor
 } General and Linn

J. C. Chas. Ex. Dab

Filed in open Court
this June the 5th 1894
A. B. Munsey
Clerk

Zion Hobbs,

vs.

J. C. Chance, Exr. et al.

} Demurrer and Answer of

} John Gilly.

The demurrer and answer of John Gilly to a bill in chancery exhibited against him and others in the above styled suit in Lee Circuit Court by Zion Hobbs.

For demurrer respondent says said bill is not sufficient in law whereof he prays judgment.

Answering, respondent states that it is true that previous to March 21st, 1889, complainant was seized of ^{the} a tract of land mentioned in his bill, and also that a short time previous to said date respondent affected a sale of _____ Hyatt's land to one William D. Jones, but respondent denies that the said Jones refused to purchase Hyatt's land unless he could also procure plaintiff's land because the latter tract lay between the Hyatt tract and the river. On the other hand respondent states and charges that he had sold the Hyatt land to the said Jones before any question of the purchase of complainant's land was ever raised. A short time after the sale of the Hyatt tract and shortly previous to March 21st, 1889, respondent was requested by the plaintiff to affect a sale of his land. The said plaintiff was willing to sell said land at \$16.00 an acre, but agreed with respondent that he should get more for the same if possible. It was also agreed between plaintiff and respondent that the latter should have as a commission for selling, 10 % of the gross purchase

price.

The agreement between plaintiff and respondent was on March 17th, 1889, reduced to writing and attested by the mark of plaintiff in the presence of one F.Y. Yeary. This writing reads as follows.

"March 17th, 1889.

This agreement entered into by and between Zion Hobbs, of the first part, and John Gilly, of the second part, all of the County of Lee and State of Virginia --- I this day authorize John Gilly to sell my land for the sum of \$16.00 per acre, and in case that the said Gilly can sell said land for any more ~~x~~ than \$16.00 per, that the said Gilly is to have pay at the rate of 10 % on the whole tract for selling said land, but it is expressly understood that the said Gilly is not to have any commission on said land in case that he only gets \$16.00 per acre on said land, but it is understood that the said Gilly is to sell said land for as large a sum as he can so that the said Gilly get his commission on said land; and the said Hobbs has to make a general warrantee deed on said land so soon as said Gilly sell the same, it --- understood that Hobbs is to have said land surveyed as soon --- land is sold.

Given under our hand and seal.

Zion his X Hobbs, (Seal)
mark

John Gilly, (Seal)

F. Y. Yeary."

The original of this agreement will be hereafter filed.

In pursuance of the above agreement your orator did on March 21st, 1889, sell said land to the said Jones at the price

of \$20.00 per acre, of which \$200.00 was paid cash, and as evidencing the deferred payments the said Jones executed his two bonds or notes to the order of the said Zion Hobbs, one for \$120.00 --- being respondents commission at the rate of 10 % --- and the other for \$880.00. And on said day, or very shortly thereafter, the said Hobbs in pursuance of the above written agreement, assigned the said \$120.00 note to respondent as and for his commission for affecting said sale.

Respondent states that he understands that there is found to be some slight deficiency in the acreage of the ~~said~~ supposed sixty acre tract, and if there is he is advised that the amount ~~xx~~ of the \$120.00 note with interest which is going to him should be reduced by its proper proportion of the abatement.

Your respondent is advised that he is entitled to the first lien on the land sought to be subjected by plaintiff's bill.

Wherefore your respondent prays that the land may be subjected to the vendor's lien as prayed in complainant's bill, but that out of the proceeds he shall first have the sum of \$120.00 with interest thereon from March 21st, 1889, subject to the reduction of 10 % of the amount of abatement for deficiency in the area of the land; that this his answer may if deemed necessary by the court, be treated as a cross-bill, and for all such further and general relief as may be proper.

John Gilly,

By Counsel.

H. M. Dowell Jr.

P. D.

Zion Hables
vs } Answer
of
John Gilly
J. C. Chance, et al
Filed May the 21st 1894
A. B. Munsey
Clerk

John Hobbs

⁴⁵
J. C. Chance Exor. & alr.

This cause came on this day to be heard upon the papers formerly read, and report of Conveyance made by Special Commissioner H. A. W. Sherr, to which there are no exceptions or objections, and was argued by Counsel. On consideration whereof it therefore adjudged ordered and decreed that said report and deed made by Special Commissioner H. A. W. Sherr to John Hobbs be and they are each truly confirmed, and said Hobbs is allowed to withdraw said deed from the papers of this cause, and nothing is remaining to be done in this cause. The same is directed from the docket.

Geo Hobbs

183 } Decem
 } Janu

J. C. Chace Esq

Enter 4 This

W L M
June 4th / 95 —

O.B. 193

Zion Hobbs

Plaintiff.

vs.

In Chancery.

J.C.Chance, Exr., et als.

Defendants.

This cause came on this the 16th day of June 1894 to be heard on the complainant's bill and exhibits therewith, the answer of John Gilley and exhibits therewith, and general replication thereto, and was argued by counsel. And it appearing to the Court that process has been duly served on the defendants W.W. James Mary James and John Gilley and that order of publication has been duly made, posted, published and completed against the non-resident defendant for more than fifteen days before the first day of this term of the Court, and that all of the adult defendants ~~have failed to appear~~ except John Gilley have failed to appear answer plead or demur, the Complainant's bill is taken for confessed as to them. On consideration whereof it is adjudged ordered and decreed that the complainant Zion Hobbs recover of J.C.Chance Executor of Wm.D.Jones, deceased, the sum of \$880.00 with interest from the 21st day of March 1894, till paid and the costs of this suit, subject to a credit of \$575.05 as of the 21st day of March 1894, paid by the Clerk of the Lee County Court on account of compensation paid by the Louisville and Nashville Railroad Company for land taken for its purposes out of the tract described in the deed of Zion Hobbs and wife to W.D. Jones, and a further credit of \$63.53 on account of shortage of said land as of the 21st day of March 1894, that John Gilley recover of J.C.Chance the sum of \$120.00 with legal interest thereon from the 21st day of March 1894 till paid and subject to a credit of \$8.69 for shortage in said land as of the 21st day of March 1894, and that he recover

answer of John Jones Rowena Jones and Eula Jones and the defendants by J.C. Chance their executor and general replication thereto

by bill
depos

of the said Zion Hobbs his costs about his defense in this behalf expended. And it is further adjudged ordered and decreed that ~~the~~ ^{each of the} sum hereinbefore decreed to be paid by the said J.C.Chance, Exr~~n~~ constitute liens on the tract of land described in the bill, but of said two sums that here in decreed in favor of Zion Hobbs, together with his costs for prosecuting this suit shall have priority. And it is further adjudged ordered and decreed that unless the said J.C. Chance or some one for him shall within thirty days from the rising of this court pay said two sums of money together with the costs of said suit, then H.A.W.Skeen, who is appointed a commissioner for the purpose, will proceed to sell the land in the bill mentioned to the highest bidder for cash in hand sufficient to pay costs of suit and commissions of sale, and on a credit of six twelve and eighteen months as to the residue. and for said deferred payments said commissioner will take bonds payable to himself with good security, bearing interest from date of sale. Said sale shall be made in front of the Courthouse door of Lee County, on some court day. But before proceeding to sell said commissioner will advertise the time and place of sale at three or more public places in said county, one of which shall be on the Court house door and the others in the neighborhood of said land. ^{for 30 days before day of sale} Before proceeding under this decree said commissioner will execute bond before the Clerk of this court in the sum of \$1000.00 with good security, conditioned to faithfully discharge his duties as commissioner and to account for all sums received by him as commissioner. Said commissioner will report his action to this court, and this cause is continued.

Lion Hobbs

vs 3 Duane

J. L. Chance Ex 96 Itas
Ent on Chy. Ord Book P53

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John Hobbs

vs

J. C. Chame Exor & alx

This cause came on
this day to be again ^{heard} upon
the papers formerly read, the
report of sale made by
Special Commissioner ^{N. A. W. Shum} and
the petition of John Gier
for re-hearing of the
decree rendered in this
cause on June 16th 1894,
and was argued by
Counsel.

On consideration whereof,
it is therefore adjudged,
ordered and decided that
the said petition of said
John Gier for re-hearing
of said decree, be and
the same is hereby dis-
missed; and it is further
adjudged, ordered and
decided that the sale of
said land made by
Special Commissioner
N. A. W. Shum and report

of said sale ~~was~~ be
 and they are hereby
 confirmed; and it
 further adjudged
 ordered and decreed
 that H. A. W. Sheer
 who is hereby appointed
 a special commissioner
 for that purpose con-
 vey said tract of land
 to Zion Hobbs by
 deed of special
 warranty and report
 to this court and
 this case is con-
 tinued.

Zion Hobbs

v3 { Deem

J. B. Cham. & Co.

Deeds

Enter this

W. J. M.
March 8, 1893.

D. B.

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Virginia, Wise County, to-wit:

I, B.O.Ferguson, a justice of the peace for Wise County, in the state of Virginia, do hereby certify that H.A.W.Skeen made oath before me in my aforesaid county, that J.C.Chance, Exor of Wm. D.Jones, deceased, Catharine P.Jones, John M.Jones, Nancy E.Allen, J.C.Allen, W.J.Carmack, B.D.Jones, John Jones, Roena Jones and Eula Jones are non-residents of the state of Virginia.

Given under my hand, this the 21st day of April, 1894.

B O Ferguson, J.P.

Hobbs Zion
Ctffidant
for Order publication
of to Chance Ever
Filed April 23rd 1894
A.B. Munsey
Clerk

Zion / Hobbs,
vs. J. Affidavit.
J. C. Chance Exor, et als.

The depositions of J. F. Bullitt, Jr., John Gilly and H. C. McDowell, Jr. taken between nine A. M. and six P. M. on June 1st, 1894, at the office of H. C. McDowell, Jr. in the town of Big Stone Gap, Virginia, before Jos. L. Kelly, Esq., Notary Public for Wise County, Virginia, to be read in evidence on behalf of defendant John Gilly in a certain chancery cause pending in Lee Circuit Court, wherein Zion Hobbs is plaintiff and J. C. Chance, Executor, et al are defendants.

Present, H. A. W. Skeen, counsel for plaintiff, and H.C. McDowell, Jr. for defendant Gilly.

J. F. Bullitt, Jr., a witness of lawful age having first been duly sworn, deposes as follows:

Q.1 -Please state your name, age, occupation and residence?

A.1 -Name, J. F. Bullitt, Jr., age thirty-seven years, occupation, attorney at law, residence, Big Stone Gap, Va.

Q.2 -I now show you a note for \$120.00 by W. D. Jones in favor of Zion Hobbs which appears to have been endorsed by the said Hobbs to John Gilly. I will ask you what, if any, recollection you have of said note and of its assignment?

A.2 -I was employed by Wm. D. Jones to examine the title of the land for which the said note was given as part consideration. I drew the notes, and the one you show me is in my hand writing. My recollection is that I also drew the deed from Hobbs to Jones. I heard the parties talk about the trade. When I say "the parties" I am not absolutely certain that I heard Hobbs talk about the matter, but my impression is that I did, and my distinct recollection is that John Gilly was to get a certain part of the money which was going from

Jones to Hobbs for his services in making the sale to Jones. I know further that it was through John Gilly that the land was sold to Jones. I do not remember what part of the money Gilly was to get, but I do remember that it was to come out of the money which Jones was to pay Hobbs. As to the assignment of the note I have no very distinct recollection about that.

Q.3 -To refresh your recollection I will ask you whether or not this note was endorsed to Gilly in the former office of Bullitt & McDowell near the Central Hotel and at the time or just after the time that Jones signed it?

A.3 -As I before said I have no distinct recollection about the assignment of the note, but my impression is that Jones signed the notes in our office and that the note in question was at the same time endorsed by Hobbs to Gilly and placed directly into the hands of Gilly.

CROSS-EXAMINATION.

Q.1 -Did Hobbs tell you that he was to pay Gilly a commission for making the sale of the land?

A.1 -I do not remember distinctly of having heard Hobbs say anything about it, but my impression is that Hobbs was present either at the time the trade was finally closed up with Jones or at some other time prior to that, at which time the matter as to what Gilly was to get was mentioned and assented to by him, Hobbs. Though that is not a distinct recollection.

Q.2 -I believe you state you drew the deed and the notes in question. Please state at whose instance and directions the deed was drawn, and the notes.

A.2 -I know that I drew the notes and am pretty sure that I also drew the deed. I was working for Billy Jones, and

when I drew the deed I was acting in a professional capacity for him I suppose.

Q.3 -What I want to know is, who directed you to divide the purchase money into the notes as drawn?

A.3 -I think that Mr. Gilly told me at the time what percentage he was to get and that this was assented to by Mr. Hobbs, and the notes were drawn accordingly, so that one of the notes, and I believe it was the last one, could be assigned over to Gilly in consideration for his services.

Q.4 - And further this deponent saith not.

Also the deposition of H. C. McDowell, Jr., a witness of lawful age, having first been duly sworn deposes as follows:

My name is H. C. McDowell, Jr., age thirty-one, residence Big Stone Gap, Virginia, occupation, attorney at law. I am counsel for defendant John Gilly in this case, and therefore regret that I feel compelled to give my testimony in this case.

The one hundred and twenty dollar note mentioned in Mr. Bullitt's deposition has on the back of it in my hand-writing

"For value I hereby assign within note to John Gilly.
Witness to signature H. C. McDowell, Jr."

Then comes the signature "Zion~~X~~Hobbs" also in my hand-writing, but with a cross mark between the words of his name. In regard to this assignment I will say, first, that I never have and would not under any circumstances attest a signature unless and until I had seen the maker of the signature either write his name or put his mark to it as in this case; but in this particular instance I have an indistinct recollection of the transaction in question. I re-

member the fact that the title was examined by my then partner, Mr. Bullitt, for W. D. Jones, and that the papers were prepared in our office. The body of the aforesaid note is in Mr. Bullitt's hand-writing and the signature thereto is that of W. D. Jones, and I re-call the fact that this note was made for the sum of \$120.00 in order that John Gilly might get his commission out of the deferred ^{purchase} ~~payment~~ money instead of the cash money. My recollection is, further, that Hobbs was present in our office at the time that he made this assignment; that he himself held the pen while I made the cross marks between the two words of his name, and that he assigned said note to Gilly as and for his commission in effecting the sale to W. D. Jones.

CROSS- EXAMINED.

Q.1 -At the time of the assignment of which you speak, are you positive that Mr. Hobbs knew the contents of said note, or what it was for, or even what paper he was assigning?

A.1 -I do not think there can be any question about that. I should certainly not have witnessed the signature of Mr. Hobbs unless I had thought that he understood what he was doing it for. My best recollection is, that the reason for the note being made \$120.00 was that it should represent Gilly's commission; was mentioned before him and that he assented to said arrangement. I am certain that at the time of the assignment I understood that it was Gilly's commission for affecting the sale, and as I said before my best recollection is that from what Mr. Hobbs said I understood that he knew what the paper was that he was assigning and why he was assigning it.

Q.2 -Did you get your information in regard to the com-

mission from Mr. Gilly or Mr. Hobbs?

A.2 -I got it from Gilly of course, but my best recollection is that Hobbs either said that this was Gilly's commission, or that Gilly told me in Hobbs's presence that this note was assigned to him as commission and that Hobbs assented to it. It is of course difficult to speak with absolute certainty of what was done and said four or five years ago about a matter in which I had no particular personal interest, and in testifying as I am, I am of course giving my best impressions rather than a distinct recollection of what either ~~and~~^{of the} parties may have said. It is of course possible that Hobbs may never have said in my presence that he assigned this note to Gilly for the commission; but my best impression is that he used words to that effect or that he assented to the statement to that effect made by Gilly in his presence.

Q.3 -Was not Gilly representing Hobbs and doing most of the talking at that time?

A.3 -Knowing the two men as I do it strikes me as very probable that Gilly would have done more of the talking than Hobbs, but I cannot say that I have any distinct recollection as to which one gave me the information that I then had as to the reason of the assignment.

Q.4 -Is it not a fact that Gilly directed you to write the endorsement on said note?

A.4 -It is very probable that that is a fact, though my best recollection is that they were both present and that I wrote the endorsement at the request of both.

And further this deponent saith not.

H. M. L. Dowell, Jr.

John Gilly another witness of lawful age having first been duly sworn deposes as follows:

Q.1 -State your name, age, residence and occupation, and your connection with this suit?

A.1 -My name is John Gilly, age forty-three, occupation farmer, residence Turkey Cove, Lee County, Virginia, and I am one of the defendants in this suit.

Q.2 -I will ask you to file with your deposition, first, a contract written in led pencil signed by you and by Zion Hobbs, by cross mark, the signatures being attested by F. G. Yeary, marked exhibit No. 1, and also a note dated March 21st, 1889, for \$120.00 by W. D. Jones to Zion Hobbs and endorsed to you; *marked Exhibit No 2.*

A.2 -I now file the same.

Q.3 -Please state the transaction between you, Hobbs and Jones from the beginning?

A.3 -Well, ~~I went~~ I first bought Mr. Hyatt's land (but that does not have anything to do with this I reckon) --- I bought Mr. Hyatt's land and sold it to Mr. Jones and asked Mr. Jones if he would not buy Mr. ~~Hobbs~~ Hobb's land also, and I stated where it was, and he said he would buy it. I went then and got a contract on Mr. Hobb's land, but Mr. Jones never told me what he would give me for Mr. Hobb's land at the time I went and got a contract; ~~that is~~, the contract that I file is the one. Then I went to Mr. Jones --- Sold the land to Mr. Jones for \$20.00 per acre. When the papers were fixed up I was to have my commission and a note ~~payable~~ from Mr. Jones to Mr. Hobbs ^{was} ~~and~~ assigned to me, and Mr. Hobbs did assign the note to me; that is, he made his mark --- I saw him.

Q.4 -State whether or not Zion Hobbs made his mark to the

led pencil contract of March 17th, 1889?

A.4 -Yes, sir, he made his mark then.

Q.5 -State whether or not he understood and had read to him the said contract before he put his mark to it?

A.5 -The contract was read at that time and I suppose he understood it.

Q.6 -What connection, if any, is F. G. Yeary to Zion Hobbs?

A.6 -He is a brother-in-law. Mr. Yeary went over there with me at the time.

Q.7 -Where has this contract been since its date?

A.7 -I suppose it has been at my house. I found it there among my papers. I had forgotten there ever having been any contract until I found it, and I then remembered. I went to hunt for it and found it among some other papers in my drawer.

Q.8 -This writing then as I understand you is the contract that you and Hobbs had for the sale of his land?

A.8 -Yes, sir. It is the only one I ever knew of.

Q.9 -State whether or not the sale to Jones was made under this contract?

A.9 -Yes, sir, I was acting under this contract.

Q.10-State why the two purchase money notes were divided, one of them being made for \$120.00?

A.10-Well, that was in order for me to get my commission. The \$120.00 note was to be assigned over to me.

Q.11-State whether or not Hobbs was present at the time the endorsement was written on the back of said \$120.00 note, and whether or not he understood what it was that he was putting his mark on?

A.11-He were present at the time, and that was mine and

his understanding that he was to assign it. He knew what he was doing.

Q.12-State who else was present at the time this assignment was signed?

A.12-J. F. Bullitt, Jr. was present and H. C. McDowell, Jr and W. D. Jones. I don't remember who else, or whether any body else was in there at the time. Mr. Hobbs and his wife were there.

Q.13-State whether or not you have ever been paid any part of said \$120.00 note by any one?

A.13-I have not.

Q.14-State whether or not said note still belongs to you and whether or not the money is due to you for it?

A.14-The note still belongs to me and the money is due me.

CROSS-EXAMINED.

Q.1 -Did you ever try to purchase from Hobbs the said land before you went with Mr. Yeary to purchase the same?

A.1 -I don't remember. We might have been talking some about it. I might have been talking to him about it.

Q.2 -Did not you ask Yeary to go with you to see Hobbs as you wanted to buy his land and that ~~H~~obbs would not let you have it unless Yeary told him to sell it?

A.2 -I think I got Mr. Yeary to go over there with me, but I don't know that Mr. Yeary had any control of his business whatever, and do not know but what it could have been affected without Mr. Yeary. I thought may be it would be somewhat easier done by Mr. Yeary going along with me.

Q.3 -Was the contract you have filed with your deposition read to Hobbs and his wife in the presence of Frank Yeary?

A.4 -I wrote the contract myself there at their house, and it were read. I don't know whether his wife was present or not --- I don't remember. I think Mr. Yeary was present but I don't know that Hobb's wife was.

Q.5 -After the contract had been written by you and before it was signed were there any changes made in it?

A.5 -Not that I have any recollection of. If there were I don't remember. I could have bought that land at the time I was talking to Mr. Hobbs for \$16.00 an acre.

Q.6 -I now show you the contract filed and ask you to read it carefully, and then say if there are any indications that at some time or other there has been words erased and others placed therein?

A.6 -No, sir, I don't think so. I don't know how it could have been done. I don't see so from this. That writing there are all my hand writing --- that is the contract.

Q.7 -In the fourteenth line in said contract in the word "than", is not the two letters "a" and "n" plainer than the "t" and "h", and look like it has been recently written, or been written later than "th"?

A.7 -Well, of course that might have been the turning of the pencil. I don't see how that would have been --- that is my hand writing --- but that might have been the change of the pencil that caused that --- the turn of the led pencil. No, sir, I know that it was never changed --- I never changed it. The "a" and "n" are not more recent than the "th". Very often in writing in turning the pencil over when it is worn on one side it makes a different looking mark.

Q. 8-After you had gotten the contract from Hobbs did you take it home and place it with your papers?

A.8 -I think I carried it a few days till after the land was sold, and then I must have taken it home. I don't remember now how long. The fact is, I had forgotten about the contract until I found it.

Q.9 -At whose instance was the purchase money divided into notes of \$880.00 and \$120.00?

A.9 -Well, I suppose that was agreed on by me and Mr. Hobbs and we directed it at the time.

Q.10-Did Hobbs ever have in his possession the \$120.00 note?

A.10-Yes, sir, both notes were delivered to Mr. Hobbs and then afterwards Mr. Hobbs assigned this \$120.00 note to me.

Q.11-Did you ever tell Hobbs at any time at what price per acre you had sold his land?

A.11-I told Mr. Hobbs when I sold that I had sold it for \$20.00 an acre and he seemed to be well pleased with the sale. When I went after him to make the deed I believe was when I told him what I got for it.

RE-DIRECT.

Q.1 -I forgot to ask you on direct examination, and will now ask you who made the signature "F. G. Yeary" on the left hand lower corner of the contract?

A.1 -Well, sir, I don't remember whether Mr. Yeary signed it himself or not, but I know Mr. Yeary was present. He was a witness to the trade --- But I don't remember how --- I suppose he ought to have signed it if he did not --- I don't remember. I know he was a witness to the trade.

Q.2 -Was the signature of Yeary made by you?

A.2 -I don't remember that it was --- I can't tell. Hobbs name was written by me, but that don't look much like my hand

writing. The Yeary signature don't look much like my hand writing, but I don't remember now who made it.

Q.3 -Can Yeary write?

A.3 -No, sir, I don't know whether he can or not.

Q.4 -You stated in your examination and cross-examination that you had forgotten that there was any written contract between you. I will now ask you what caused you to look amongst your papers for such a contract?

A.4 -First was, I seen Mr. Hobbs' bill in this case stating that there was a contract. Then I went home to look and see if I had such a contract.

Q.5 -State whether or not there was ever any other contract between you and Hobbs with reference to this sale ~~either~~ written or verbal ---I mean other than the one you have filed as exhibit No. 1?

A.5 -There were not.

Q.6 -It is stated in the bill that Jones refused to purchase from you the Hyatt land because of the fact that Hobb's land cut off the Hyatt land from the river and ~~requested of~~ ^{required} you to get the Hobbs land for him before he would buy Hyatt's land. What are the facts in regard to this matter?

A.6 -The fact is he bought Mr. Hyatt's land before he bought Mr. Hobb's land, and there never was any such thing stated about cutting off from the river. The fact is there is more of the Hyatt land on the river than there is of the Hobb's land. It had free access to the river. The Hyatt land is on both sides of the river, and it is all in one tract. It run higher up on the mountain than Mr. Bobb's land did.

Q.7 -In the bill in this case it is alleged that the contract between you and Hobbs was that his land was not to be

sold for less than \$18.00 an acre; that you were to sell it for more if you could, and that in no event were you to have anything for selling the same. Will you tell me whether or not there was any reason why you would have been willing to sell Hobbs's land for him without charging him a commission?

A.7 -There were not any reason in me selling it. In fact, I never did sell any man's land without a commission.

Q.8 -Please state what business you were principally engaged in along about the time of this contract?

A. 8-I was engaged in the real estate business.

RE-CROSS EXAMINATION.

Q.1 -Is it not a fact that the Hobbs land is a narrow strip lying on the north side of the river between said river and the larger portion of the Hyatt land?

A.1 -The Hyatt land joins the Hobbs land all the way up --- I don't know --- I was never acquainted with the upper side of the Hyatt land, but the Hyatt land has a large opening to come out to the river. The Hobbs land lays up on the mountain right smartly, ^{not} ~~as~~ as high up as the Hyatt land. I ~~think~~ think the ~~Hyatt~~ ~~land~~ Hobbs land lay in below the Hyatt land. I suppose about one half or one third of it was higher up the mountain.

Q.2 -Was there ever any agreement between you and Hobbs in regard to the sale except the one entered into and reduced to writing in the presence of Yeary between you and Hobbs?

A.2 -No, sir.

And further this deponent saith not.

Virginia,)
) To-wit:
Wise County.)

I, Jos. L. Kelly, a Notary Public in and
for the county and state aforesaid, hereby certify that the
foregoing deposition of J. F. Bullitt, Jr., H. C. McDowell, Jr.
and John Gilly were duly taken, subscribed and sworn to before
me at the time and place and for the purposes mentioned there-
in and in the notice thereto annexed.

Time taken two hours. Notary's fees \$1.50 paid by John
Gilly.

Given under my hand this June 1st, 1894.

Notary Public for Wise County, Va.

To *Zion Hobbs, Esq*

Take notice, that on the *1st* day of *June*, 189*4*, at the office of *H McDonald Jr*
in the town of *Big Stone Gap, Va*, between the hours of 9
o'clock a. m. and *7* o'clock p. m. of that day, I shall proceed to take the depositions of *Jno Gilley,*
J F Bullett Jr *H McDonald Jr*, and others
to be read in evidence in my behalf in the suit in equity depending in the *Circuit* Court of
Lee County in which *Zion Hobbs is*
Plaintiff and *J. C.*
Chance, Exor et al are

Defendant*s*; and if from any cause the taking of said depositions be not commenced on that day,
or if commenced, if they be not completed on that day, the taking of said depositions will be
adjourned and continued from time to time and place to place until they are completed.

Respectfully

John Gilley
per counsel

Executed May
the 28th 1894
by Delivering a
True Copy of
the within Notice
to Zion Hobbs
this May 28 - 1894
L. M. Wade D. S. for
C. E. Flannery
S. L. C.

J. F. BULLITT, JR.,
ATTORNEY AT LAW,
OFFICE, AYERS BLOCK,

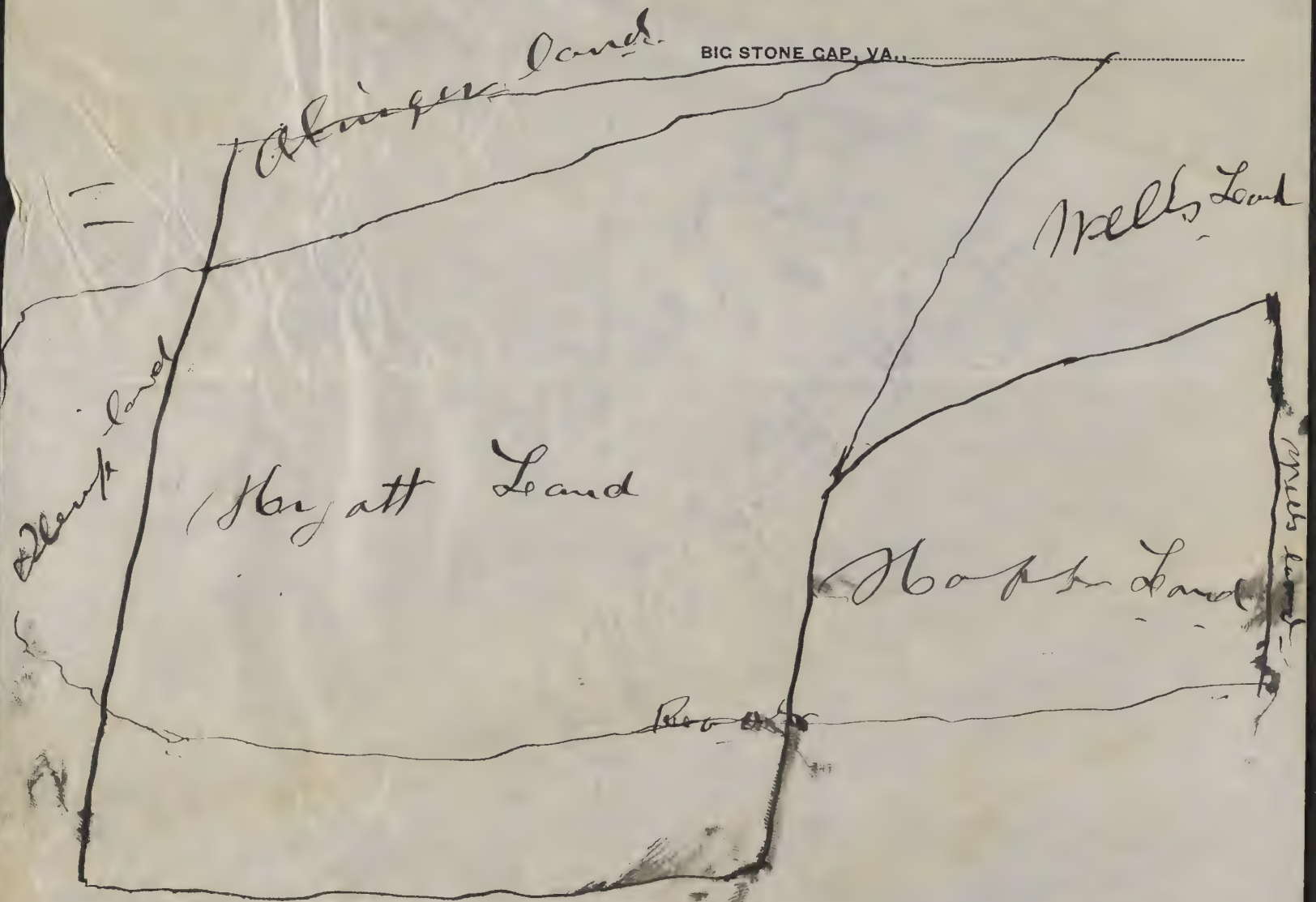


Exhibit 3

\$120⁰⁰/₁₀₀ . Big Stone Gap Va March 21, 1889

On or before five years after date I
promise to pay to the order of John Hobbs.
One hundred and twenty dollars, without-
interest, value received, payable at Big Stone
Gap Virginia.

This is the first note mentioned in
a deed of this date from John Hobbs
and wife to me.

Wm. J. [Signature]

For value I hereby assign
within note to John Gilly
witness to signature
H C McDowell, Jr. Zion X Hobbs

2

Filed as Exhibit
no. 2 with John
Gilly's Deposition
June 1st 1894.

J. L. Keel
N. P.

\$880 ⁰⁰/₁₀₀ Big Stone Gap Va. March 21, 1889

On or before five years after date I
promise to pay to the order of John Hobbs
Eight-hundred and eighty dollars, without
interest, value received, payable at Big
Stone Gap Virginia.

This is the second note mentioned
in a deed from John Hobbs & wife to me
of even date herewith.

M. S. Jones

credit the within total
by cash received. Jan. 18.
The same late clerk of the
Co. in connection with proceeding
was to Jones and also of
L. J. to Railroad Co. \$373.02
March 24, 1894

Apr 30th 1889
By S. H. Hays
\$72.20

Filed as Exhibit No. 1
with John Kelly's Depo-
sition June 1st 1894.
Jas. L. Kelly, N.P.

March 17th 1889-

This a agreement Entered
into by & between Gian
Habit of They first part
& John Kelly of They
second part all of
They cannot of be
of State of Ga -

This day & otherwise
John Kelly to sell they
land for they sum
of \$16.00 per acre & in
add that they said Kelly
can sell said land
for 4000 more: Than
16.00 per that they said
Kelly is to have pay
at they Rate of 100
cent on they Hall
Track for selling
said land but it is
Expressly under stand
that they said Kelly

is not to have
any Commission on said
land in case that
he may get there for
a well in said land
but it is under-
stood that they said
Gill is to sell said
land for as large
a sum as he can
have that they said Gill
get his Commission
on said land
& they said Hobbs to
make a General
Warrant deed on said
land and soon
as said Gill sell
the same it will
be understood that Hobbs
is to have said land
as well as said land
and said sum made, and
said deed
Wm & J. W. 1897
Giant & Co
John Gill

—FROM—
H. C. M'DOWELL, JR.,
Attorney at Law,
BIG STONE GAP, VIRGINIA.

150
350
500

Exhibits 1 & 2
with Jno Gelly deposition

The deposition of F. G. Yeary, Zion Hobbs and Mary Hobbs taken at H. C. McDowell's law office, Big Stone Gap, Va., per agreement before Jos. L. Kelly, Notary Public.

Present H. A. W. Skeen, counsel for plaintiff, and H. C. McDowell, Jr. for defendant Gilly.

F. G. Yeary, a witness of lawful age, having been first duly sworn, deposes as follows:

Q.1- State your age, residence and occupation?

A.1 -I am 41 years old, occupation farmer, live in Wise County.

Q.2 -Were you present when Zion Hobbs authorized John Gilly to sell his land, if so state all that occurred and ^{when} ~~that~~ was said just prior to the time said contract was entered into between said parties.

A.2 -Yes, sir, I was present. Well John Gilly he come to my house and asked me to help him-to go with him to help buy Hobbs land, and said to me: "I cannot buy it myself without you will help me". He said, "I don't want to take anything off of Hobbs for the sale of that land". He said, "It helps me to sell the Hyatt land". He said, "The commission I get on the Hyatt land pays me to sell Hobb's land". I agreed then to help him buy Hobb's land if we could. We was to meet (is my recollection now) next morning at Hobb's house. When I went to Hobbs' Gilly was there. We then talked the trade over with Hobbs and his wife and went into contract. Gilly was to take the land and sell it for not less than \$18. per acre, and for all over that he could get, and pay it over to Hobbs. He said he did not want anything for the sale of the land, and told Hobbs and his wife so after we got there. Well, we then, after that, agreed that they would make that

trade with him. We drew up a contract then to that effect.

Q.3 -Please state to the best of your opinion upon what kind of paper that contract was written?

A.3 -Well, my recollection is that it was done on a large piece of paper.

Q.4 -Did you attest said contract?

A.4 -Yes, sir, I signed my name to it.

Q.5 -I now show you the contract filed with John Gilly's deposition as exhibit "1" which purports to be attested by you. Please examine said signature and state of the same is your signature --- if you made it?

A.5 -No, sir, I never put my name to that. That is not my signature. I don't think for my life that I could write such a hand as that.

Q.6 -Who wrote the contract between Gilly and Hobbs?

A.6 -Gilly wrote it himself.

Q.7 -Did you read said contract?

A.7 -My recollection is that I have. I haint no first class scholar at all in reading writing, and Gilly writes a tolerable bad hand for bad readers. I took, I think, and may be tried to read and then turned it over to Gilly and asked him to read the contract over, and he read it, or pretended to read it.

Q.8 -How did he read that contract?

A.8 -He read it as the contract was made --- as I have stated here before --- that he would sell the land for \$18.00 an acre. He never asked for no commission.

Q.9 -Will you please look at exhibit No. 1 and read it and state if that is the contract entered into between Hobbs and Gilly for the sale of said land?

A.9 -It is not the contract.

Q.10-Did Gilly ever tell you what he had sold the Hobbs land for?

A.10-I don't think he ever did.

Q.11-When did you first learn that John Gilly was claiming commission for making said sale?

A.11-Well, it seems like the first I ever heard of this, has been two years ago, but as to know that he was claiming anything, it has been no great while. I just supposed it was talk over the country and did not think that Gilly was claiming anything, knowing the contract as I did.

Q.12-Are you acquainted with the location of the Hyatt and Hobbs land?

A.12-Well, tolerably well. As to the Hobbs land, I have been all around to each corner I suppose, but as to the Hyatt land I never was clear around that. I know a right smart about the land by just passing over it.

Q.13-I now show you a plat of the Hyatt and Hobbs land in reference to Powell's River, the Railroad, and their location. Please state if that represents the relative positions of said tracts of land, and if so please file it as part of your deposition?

A.13-Well, sir, this is the condition of the Hobbs land. As to know about the Hyatt land, I know it lies in above the Hobbs land between that and the waters of Powell's River.

By Mr. McDowell: You do not know that that is a correct representation of the lands?

I would not say that that is correct more than, this represents the Hobbs land very much, and the Hyatt land. That is a very good representation of the lands and I herewith file the same as part of my deposition marked exhibit "Plat".

Object to the filing of this exhibit, and the answer of the witness in regard to the same is objected to unless it be proved that said plat is an accurate representation of the relative position of the two tracts, because the same is exceedingly liable to mislead the witness if it be not an accurate representation.

McDowell.

Q.14-Do you know of your own knowledge that Gilly hadn't sold the Hyatt land when he took the contract on the Hobbs land?

A.14-~~Next~~ He told me that he hadn't; that he could sell it better by getting Hobb's land.

CROSS-EXAMINATION.

Q.1 -Mr. Yeary, what relation, if any, are you to Zion Hobbs and to his wife?

A.1 -I married a sister of Hobb's wife--- my first wife was a sister to Hobb's wife.

Q.2 -How far do you live from this Hobbs tract in question.

A.2 -I expect its a little over half a mile may-be--- three quarters of a mile would be a very nice ^{near} guess at it.

Q.3 -Were you present when ~~Hobbs~~ and wife executed the deed to Jones?

A.3 -No, sir.

Q.4 -Who was present when the contract was made and written?

A.4 -There was me and Gilly and Hobbs and his wife, and some small children.

Q.5 -Where was the contract written?

A.5 -In Mr. Hobb's house by the fire-side.

Q.6 -What was it written with?

A.6 -Well, I cannot firmly at this time state whether it was done --- I recollect something about calling for the ink --- there was something said about it being frozen, or something of that kind, but as to say it was done with pen and ink or with pencil I haint firm about it.

Q.7 -What kind of paper was it on?

A.7 -My recollection is, that it was done on a large piece of heavy writing paper.

Q.8 -I mean what sort of large paper?

A.8 -You mean the brand of paper?

Q.9 -Yes.

A.9 -Well, I cannot tell you what the brand of it was. It was something like we call the "Fools Cap" paper it seems to me, as well as I recollect.

Q.10-Where did the paper come from?

A.10-I suppose Mr. Hobbs had it there -- I cannot state.

Q.11-How many sheets was the contract on?

A.11-Well, sir, my recollection is, it was on only one side of a sheet-- I do not think there was any two sides of paper written on.

Q.12-To whom was the contract given?

A.12-Gilly held it himself.

Q.13-Did you ever see it again after that day?

A.13-Never did, sir.

Q.14-What did it provide except the price per acre and that there was no commission?

A.14-Well, it was a very short contract I call it, and it only stated that Gilly was to take Hobb's land and sell it for not less than \$18.00 an acre, and for as much over as he could get, and that Hobbs was to make a deed to the land when Gilly

made sale of it. He was to make a warranty deed to the land.

Q.15-Is that all it provided for?

A.15-Well, now, I cannot say that it was. I cannot state it word for word. Of course I suppose there was more stated in it. I paid more attention to the particulars of the price of the land, and know'd well and good that Hobbs, if he could get that for it, would make a deed without any trouble, is my impression about it.

Q.16-Did you ever see the deed that Hobbs made?

A.16-I never did that I know of --- If I ever did I don't know it.

Q.17-Is it not customary for the officer who takes an acknowledgement to a deed, and especially the acknowledgement of a married woman, to read the deed to the parties who are to sign it?

A.17-Yes, sir, that is the general custom I suppose to read deeds to people that makes deeds -- I suppose it would be -- I know they would to me if I was making a deed I would have to know what I was doing.

Q.18-Now, if Mr. Hobbs at the time he and his wife signed the deed assigned to Gilly one of the purchase money notes, for what purpose did he sign it?

A.18-I cannot say, sir. He had no contract to do so, and I don't see why he would do that; that is, at the time this here contract was drawn he had no contract to that effect.

Q.19-Was not that a very remarkable thing that he should assign the purchase money notes, which are exactly 10 % of the purchase price, to Gilly?

A.19-I call it a very foolish thing myself, I don't know what you call it. I call it, a man not knowing what he was doing.

Q.20-At the time that the original contract was being written, were both Mr. & Mrs. Hobbs in the room all the time?

A.20-My recollection is, they sit right by while the contract was drawed and until it was signed up.

Q.21-What did the paper rest on while it was being written?

A.21-Well, sir, my recollection is, it was a loom seat.

Q.22-You don't know whether it was pencil or ink?

A.22-I cannot state firmly which it was. There was something said about the ink, but I cannot say it was wrote with ink.

Q.23-And you don't know who furnished the paper?

A.23-I think that -- well I would not say for certain, but my idea is that Mr. Hobbs had the paper there -- I am not certain.

Q.24-Can Mrs. Hobbs write?

A.24-She says she cannot. I never saw her write any.

Q.25-And you think that Hobbs furnished the paper?

A.25-Well, that is my impression, but I would not say they did.

Q.26-Now, when you think it over, did not Gilly bring the paper with him?

A.26-I cannot tell you -- I would not say -- my impression is they got the paper there at Hobbs house -- I would not say firmly.

Q.27-Can Hobbs write?

A.27-He says he cannot. I never saw him write any.

Q.28-What would they be doing with writing paper and ink if neither of them can write?

A.28-They had a chap there -- I suppose he was large enough to go to school-- and I think their boy was old enough

12 years old or close on it at that time, and the child is very well schooled to his age for a country boy.

Q.29-Would it not have been a little remarkable that Gilly should have gone to the house of two people, neither of whom can write, for the purpose of making the contract on the land and not take any paper with him?

A.29-May-be Gilly did not know he was going to get a contract. He had only talked this to me before and had asked me to go with him.

Q.30-Well, would not it have been remarkable?

A.30-It looks like a man would have done such a thing. I would not say that he did or did not.

Q.31-You say, after Gilly wrote the contract he handed it to you to read?

A.31-Gilly handed me the contract and I looked at it. It was wrote what I call tolerably bad for a bad reader, and I looked at it and reached it back to him and asked him to read it and he went over the contract as we agreed.

Q.32-Did it seem to you, so much as you read of it, that it was the contract as agreed?

A.32-Yes, sir, it seemed what he read of it and what I seen of it that it was what the contract was according to agreement.

Q.33-To whom did Gilly sell the Hyatt tract?

A.33-I cannot say for my life. I have heard that it was McGeorge -- I don't know -- I know nothing about the sale of the Hyatt land.

Q.34-To whom did he sell the Hobbs tract?

A.34-They told me that he sold it to Jones -- I never seed no deed and nothing to show that he did sell it to Jones.

Q.35-Suppose that the Hyatt tract had been actually sold

before he ever went to Hobbs, what reason would there have been for Gilly to sell the Hobbs tract without any commission?

A.35-Well, sir, now, I do not have any idea. It looks to me that it was to get the \$1~~20~~²⁰⁰.00 he is claiming.

Q.36-Then, as I understand you there would have been no interest on his part in effecting the sale unless it was to earn a commission. Am I right?

A.36-No, sir. I don't understand it that way. Well I do state that the way I understand it, I meant that he intended to take this undermining plan, if you have to know.

Q.37-Had Hobbs any reason to think that Gilly would sell his land for him for nothing?

A.37-Nothing only what Gilly told him I suppose, and what he told me. He told me as I have stated that it was to ^{square} ~~make~~ up the Hyatt land; that he could sell it better by having the Hobbs land --- that is just what he come to me and told me

Q.38-Was not Gilly in the real estate business pretty considerably about that time?

A.38-I suppose he was.

Q.39-Was not 10 % the usual commission charged on selling real estate?

A.39-Well, he at that time, if I don't mistake, told me he had sold the Hyatt land for 5 %.

Q.40-I will now ask you again, was not the usual commission that Gilly and other real estate men were getting in those days 10 % of the purchase price?

A.40-I cannot state that. I did not sell any and don't know what they got. I just know what Gilly told me.

Q.41-You don't know anything except what will work against Gilly do you?

A.41-Well, if I did I would tell it. I haint here to

swear to any lie Mr. McDowell.

Q.42-Is it not a fact that Gilly sold the Hyatt tract to W. D. Jones at least a week or more before he ever started after a contract on the Hobbs land, and that afterwards by Jones and McGeorge's wish the deed from Hyatt and wife, ~~and~~ ~~deed~~ to Jones, was destroyed and a new deed made to McGeorge?

A.42-I don't know anything about that sale.

Q.43-Answer the first part of the question please. Is it not a fact that the Hyatt tract ---

A.43-I don't know. He said not. He said he hadn't sold it; that he could sell the Hyatt land if he had the Hobbs land ---it would help him to sell it.

Q.44-Why did you go with him to see Hobbs?

A.44-Because he come and asked me to go. I don't say I went with him, but he come to my house and spoke to me to meet him there the next morning, and I did so.

Q.45-Well, what was there in it for you to go there?

A.45-There was not a cent in the world. I only thought that Hobbs might do better with that much money if he could get it. Gilly spoke to me one time before that to go with him and we could make something on it, and I remarked back to him that I did not want to take anything off of Hobbs and his wife and children.

Q.46-Then your interest in going there, as I understand it, was to help Hobbs make the sale?

A.46-Yes, sir, that Hobbs might sell that land and buy him a better place. He had been refusing to sell it to several men he told me, who had ~~be~~ offered to buy it.

Q.48-What did the Hyatt land sell for?

A.48-I cannot tell you sir.

Q.49-Is it not a fact that Bobbs was willing to take \$16.

an acre for his land, and that Gilly could have gotten it for that price if he had been willing to buy it under writing and thus make himself liable for the whole purchase price?

A.49-I don't suppose he could, simply because Hobbs had told me before that Mr. Wells had offered him \$800.00 for the land, to pay it in 30 days --- just take the boundary at \$800. and I suppose according to the running of it out it would have been as much or more, and to pay the money in 30 days was better than five years time I think.

Q.50-The contract you saw written then, provided that the money was to be paid in five years did it?

A.50-No, sir, I think that the agreement was that there was to be \$200.00 paid when the deed was made, and the balance in five years time. That is my recollection about it.

Q.51-You say that was the way the contract read?

A.51-That is my recollection about the contract. There was to be \$200.00 paid when the deed was made and the balance to be paid in five years. Gilly went on to tell me that that was the only way that Mr. Jones would buy at that time.

Q.52-Now, what is your idea about this paper filed with Gilly's deposition as exhibit No. 1?

A.52-My idea is that John Gilly or some other man has wrote that since we made that contract. That is exactly what I think. I did not want you to ask me that on account of Mr. Gilly.

Q.53-What do you think become of the contract that you say was written?

A.53-Well, sir, I can't tell you.

Q.54-What do you think has become of it?

A.54-I think it has been destroyed or lost by some one. That is my idea.

Q.55-By whom?

A.55-Well, if John Gilly has held the paper he must have been the man who has done it.

Q.56-If I catch you correctly, what you mean to say is, that this exhibit No. 1 was concocted by Gilly to be substituted in place of the contract that was really written?

A.56-Well, I say that that aint the one I signed. I never signed that paper. I don't think that is the paper that was drawn up. I am confident it aint the one.

Q.57-Well, are you sure or do you merely think it is not?

A.57-No, it aint the one. It is not my signature--- No it is not drawn on the same kind of paper --- that don't cover the contract --- I say it aint the contract as it is not drawn on the same kind of paper --- that is my recollection about it.

Q.58-John Gilly is a pretty ^{shrewd} ~~wise~~ man is he not?

A.58-Well, John is considered a man of tolerable fair means in his way.

Q.59-Well, he is considered pretty ^{shrewd} ~~smart~~, is he not?

A.59-Well, Johny is a man that I hear different men say that he is good for what he promises, and he has always been square with me as far as I have ever had any dealings with him. He has always been pretty good to pay --- about as close as the most of farmers.

Q.60-He has never been considered an idiot has he?

A.60-Well, I don't know whether he has or not. He might have been at times called a fool --- As far as sense is considered he has good reasonable sense as a common man.

Q.61-He has been very successful, in business has he not?

A.61-It seems like Gilly has been a very successful man.

Q.62-Well, now, as a matter of fact, is not his reputa-

tion that of being a clear headed, ^{shrewd} ~~sound~~ man?

A.62-Well, I have stated as much about that as I know. Most of men say that Gilly is a man of very fair sense --- I hear tell that he is a man sharp and full of tricks.

Q.63-Well, now, if he ~~has~~ done what you seem to say he has done, sat down and concocted this contract, Exhibit No.1 in place of the other one, he has done a very idiotic thing has he not in leaving out of this ~~concocted~~ instrument everything that relates to the terms of payment?

A.63-Well, I state that that there aint the contract--- Well it looks like that he has.

Object to the foregoing question and answer because it calls on the witness to express an opinion, and because immaterial and irrelevant.

H. A. W. Skeen.

Q.64-You ~~are~~ certain that the contract that you saw written provided that the money should be paid, \$200.00 cash and the balance in five years?

A.64-At the time the deed was made --- That was the agreement.

Q.65-I did not ask you what the agreement was at the time the deed was written.

A.65-I said that was the contract --- \$200.00 was to be paid when the deed was written --- that Jones would pay \$200. when the deed was made and the balance in five years.

Q.66-And you don't remember anything else that was in that written contract except what you have stated?

A.66-Well, of course it stated, I suppose, that Hobbs was to make a general warranty deed if Gilly made sale of the land--- I could not state word for word what the contract was.

Q.67-Now, think and see if you can remember anything else that was in that contract?

A.67-I might study and think what more there was in the contract, but as to say to take it word for word I could not. If I sit down and think I might be able to study the whole thing out, but it might take me some little time to call it all over word for word, and I could not tell everything that was in the contract, But the amount of the payment ~~was~~. I paid more particular attention to because I wanted Hobbs to do the best with his land he could.

Q.68-Did the contract provide that Hobbs was to retain a lien for his purchase money?

A.68-I aint certain --- I don't believe it did.

Q.69-Did the contract provide that Hobbs was to have possession of his land until the five year note was paid?

A.69-Yes, sir, that was in it --- He was to hold possession --- that was in it ---till the last payment was made.

Q.70-Did the contract provide that he was to have the land surveyed?

A.70-I cannot say about that.

Q.71-Did it provide that his wife was to join in the deed

A.71-I don't know. I think that may-be Hobbs was to make a warranty deed --- I would not say that the contract specified his wife.

Q.72-Now, have not you got confused what the contract said and the trade as actually made and perfected with Jones?

A.72-No, -sir, I think not. As to the facts about anything that was done with Jones, I don't know anything about that. I was not up here when they made the deed.

Q.73-Well, you have since heard that the trade as made with Jones required a survey of the land and gave Hobbs posses

sion of it until the note was paid, have you not?

A.73-Well, if I did it slipped my mind that Hobbs did have the land run out himself? He said he did. I could not state firmly who had it run out at all. I don't know.

Q.74-You do know that he has been living on it since that don't you?

A.74-He has lived on it all the time --- He has never moved off since he sold it, or if he did I have no recollection of it.

Q.75-Where, as you have heard, did Hobbs and wife execute the deed?

A.75-Well, I heard it spoken of by them that they made a deed to Jones. They told me that they signed the deed here in town (Big Stone Gap), but as to tell you exactly where it was executed I could not. They told me that it was done, I believe, before Mr. Bullitt or Mr. McDowell --- They were the men who did their writing --- They supposed it was them --- They said they did not know nary one of you.

Q.76-How long ago do you say it was that you first heard that Gilly was claiming a commission?

A.76-It has been two years I expect since the first time I ever heard.

Q.77-Who did you hear talking about this?

A.77-The first men who I heard say anything about it was his son-in-law.

Q.78-Who else?

A.78-I don't know that I can just now state. They said Johny was claiming a commission for the sale of Zion Hobb's land and I just remarked to them that he was not to have any.

Q.79-When did you first hear Hobbs and his wife say anything about it?

A.79-Well, I expect it has been --- well it was I expect in November or December last. six months may be -- I don't suppose it has been much longer than that since I ever heard Hobbs say Gilly was claiming a commission.

RE-DIRECT EXAMINATION.

Q.1-When did you first learn that Gilly had sold the Hobbs land at \$20.00 per acre?

A.1 -I never knew it sir, till you told me that the deed was drawn for \$20.00 per acre. I always thought that he sold it for \$18.00, was the impression I had -- I never knew it till you told me you had examined the deed and saw he had sold it for \$20.00.

Q.2- How long have you known Zion Hobbs?

A.2 -Well, sir, I cannot exactly state the day and year, but I have known him since the time he was a boy.

Q.3 -Is he a business man?

A.3 -No., sir, I call him a very poor man in business --- in any kind of trading or business. He makes trades that I would not a heap of times.

Q.4 -When you first learned that Hobbs and his wife had found out that Gilly was claiming commission for selling their land, did they deny or say that Gilly was to have any commission?

A.4 -They said they did not see what he was claiming commission for --- that he was not to have anything.

This question is objected to because leading, hearsay and a self serving declaration.

McDowell.

RE-CROSS EXAMINATION.

Q.1 -When did you first hear of the sale to Jones?

A.1 -Well, the first --- it was a very short time after the deed was made I suppose, that I heard that Gilly had sold and they had went up there (Big Stone Gap) to make a deed.

Q.2 -You are positive are you that what you heard was, that they had sold the land at \$18.00 an acre?

A.2 -Yes, sir, that was the understanding from them that Gilly had sold it for \$18.00 an acre. They told me that Gilly had sold the land for \$18.00 an acre. That is all that I know about it --- I never did see any deeds to it.

Q.3 -Well, they seemed satisfied with the sale did they?

A.3 -Well, they supposed that was all he got --- They had to be satisfied when they authorized him to sell it --- when he could not get more than that they had to be satisfied I reckon.

Q.4 -Then, as I understand you, they conveyed the land at \$18.00 an acre and rested content until they heard that Gilly got a commission, and then they made up their minds that they would make him give it up?

A.4 -How else could they do. If you authorize a man to sell it for that and ~~xxxx~~ he claims he did sell it for that, what else could you do.

DEPOSITION OF MARYETTA HOBBS.

Maryetta Hobbs, another witness of lawful age, having first been duly sworn, deposes as follows:

Q.1 -State your age and if you are the wife of Zion Hobbs

A.1 -I am 37 years old. I am the wife of Zion Hobbs.

~~Q.2~~xx

The deposition of this witness is objected to be-

cause of her incompetency.

McDowell.

Q.2 -Were you present when John Gilly took the contract for the sale of your husband's land? If so state all that was said and done in your presence about said contract?

A.2 -Yes, sir, I was present. The first that I knew of it or thought about selling the land, Mr. Gilly came to our house one morning and asked if Yeary had come over. We told him, no, sir, and he said Yeary was to meet him there that morning to buy our land, and he said "I will give you \$18.00 an acre for it", and he said "If the land brings ~~more~~ \$20.00 I will give it to you. If it brings \$25.00 you shall have it. I charge you no commission on the land --- I sell this land to square off the Hyatt land". He said "It makes me more to sell your land with the Hyatt land than I can get for the Hyatt land by itself. Your land just squares the Hyatt land off." He said, "I charge you no commission."

Q.3 -Was that contract reduced to writing?

A. 3-Yes, sir.

Q. 4-Who wrote the contract?

A.4 -Mr. Gilly.

Q. 5-State if the said contract was written with ink or led pencil?

/ A. 5-It was written with ink.

Q.6 -Was the contract read over after it was written, to ~~or~~ Mr. Hobbs?

A. 6-Yes, sir.

Q.7 -Who read it?

A.7 -Mr. Gilly.

Q. 8-Was Mr. Yeary present?

A.8 -Yes, sir.

Q.9 -How long after you had given this contract was it until you made a deed?

A.9 -Well, it was not very long. It was a short time. I won't state what day or month that we made the contract, but we made a deed the 21st day of March.

Q.10-Did any one come after you to get you to come up here to make the deed?

A.10-Yes, sir.

Q.11-Who was it?

A.11-Mr. Gilly. He came after us for us to go to Mr. ~~McDowell~~ to make the deed and Mr. Bullitt and Mr. McDowell were to meet us there at R. Hyatt's. They did not come, but Mr. Gilly came from town and told us and Mr. P. Hyatt and wife to come up here ^(Big Stone Gap) to make the deed to Mr. Jones, I suppose. Mr. Hyatt's wife was weakly --- she goes back and I and my husband and Mr. Gilly and Mr. Hyatt all come up here, (Big Stone Gap) to make the deed. Well, we made the deed that day to Mr. Jones (I never seen the man, nor don't know nothing about him). We made the deed before Mr. Bullitt or Mr. McDowell, I suppose, I don't know which one done the writing. I don't know whether Gilly was present or not, but I don't think he was all the time. He was present part of the time. Mr. Hyatt, he made no deed that day. They said he just give a title bond the day that we made the deed, and when the deed was made there was two papers drawn up --- I don't know what it was --- I can't read, nor write neither. They said they was notes --- They was given to Mr. Gilly to take them to the Central Hotel. He said "I will take these to the old man (Jones) to endorse them. He took the papers said to be notes to the old man, and he came back and said he endorsed them --- He hands them to Mr. Bullitt or Mr. McDowell, I don't

know which one it was, they did something to them and then handed one to Mr. Gilly and one to me. My husband was standing in the door looking out at something on the street. He neither seen nary one of the notes (said to be notes) until we got home, I showed him the note. Neither one of us could read it, and never heard it read for I reckon six months after we had the note. I did not know anything about Mr. Gilly getting anything over \$18.00 an acre. I took him to be a man of his word and as a friend to us in that sale until about two years ago Mr. Jones died. He then rumored something to our neighbors, that as quick as the note come due he was going to sell Hobb's land if Hobbs did not pay him the \$120. I just remarked that he hadn't earned anything according to his word, and I thought if it was just I wanted Mr. Gilly to have it, and if it was unjust I wanted us to have it. If it is unjust to Mr. Gilly and if he thinks its right for him to have it yet, I want him to have it.

Q.12-When Gilly came to get you to come to town to make the deed, did he tell you what he had sold the land for per acre?

A.12-He said he got \$18.00 an acre.

Q.13-Describe the paper as near as you can upon which Gilly wrote the contract?

A.13-Well, it was something larger than that paper (meaning exhibit No. 1) and thicker than that paper. I won't be certain but I think it had a red stripe that run down on the side of it like that. (Indicating a piece of legal cap.)

Q.14-You have heard the contract read over filed as exhibit No. 1 wherein it states that Gilly was to sell the land for not less than \$16.00 per acre or for more, and if he sold it for more he was to have 10 % on the whole. Was that the

contract?

A.14-It was not.

Q.15-I now show you exhibit No. 1, and from the looks of the paper do you think that is the contract that Gilly wrote for the sale of the land?

A.15-It is not.

Q.16-You cannot read or write?

A.16-No, sir.

Q.17-Why do you say it is not the contract?

A.17-Because it ~~ixx~~ was larger paper, and because it was written with pen and ink. That is exactly the reason.

Q.18-State if your land lies between Powell's River and the Hyatt land?

A.18-It does.

CROSS-EXAMINATION.

Q.1- You heard Mr. Yeary give the whole of his deposition did you not?

A.1 -I did.

Q.2 -Who furnished the paper on which the contract was written.

A.2 -Mr. Gilly.

Q. 3-I now show you a sheet of legal cap paper. Is that the kind you mean?

A.3 -Yes, sir.

Q.4 -Do you know what fools cap paper is?

A.4 -It is a large sheet of paper, they call it fools cap paper.

Q.5 -Has it the red line down one side like legal cap?

A.5 -No, sir, it has not.

Q.6 -What colored ink was used?

A.6 -Black.

Q.7 -Where did the ink come from?

A. 7-It come from our house.

~~Q.8-Where did the pen come from?~~

Q.8 -Where did the pen come from?

A.8 -Well, I don't know whether Mr. Gilly had it or whether he got it at our house. I won't state that for certain.

Q.9 -Were you present while the contract was being written?

A.9 -Yes, sir.

Q.10-How much of the paper did it cover?

A.10-Well, I think, as well as I recollect, it covered one side.

Q.12-The whole of it?

A.12-Yes, sir, all on one side.

Q.12-Did you hear Gilly read it?

A.12-Yes, sir, I heard him read --- He pretended to read it.

Q.13-What did it provide for except the price per acre, and that he was to have no commission?

A.13-Well, sir, to square off the Hyatt land. That was in the contract.

Q.14-Do you remember anything else that was in the contract?

A.14-Yes, sir.

Q.15-Please state what?

A.15-While Mr. Gilly was drawing up the contract Mr. Yeary asked him to stop. He stopped, and Mr. ~~Yea~~ Yeary said: "I just want to speak one word to you. Say, 'If this ~~fee~~- is not paid in five years this deed is null and void,' that will save trouble."

Q.16-And was that put in the contract?

A.16-Johnny said it was --- He read it that way.

Q.17-Was there anything else in the contract?

A.17-Well, there was a right smart in the contract --- I just can't state over all there was, but he was to sell the land for \$18.00 an acre --- take no less, and if it brought more we were to have it. We were to have every cent of it. It was just to square up the Hyatt land.

Q.18-You are certain, are you, that the contract said that it was to square up the Hyatt land?

A.18-Yes, sir.

Q.19-Do you believe that John Gilly has destroyed or cancelled the contract that was actually written and has concocted this one to be used in its place?

A.19-Well, it seems that way, I mean from the looks of that one.

Q.20-You say he wrote the contract that you saw written?

A.20-Yes, sir.

Q.21-If he had wanted to do such a thing would it not have been very easy for him to get another piece of legal cap paper with a red line down it, and to write the fraudulent contract in ink so as to make it at least look ~~like~~ something like the contract that you saw written.

A.21-Well, it looks like that way, but as it happened he did not.

Q.22-Do you remember any other provisions of the contract except what you have mentioned?

A.22-Well, we was to have \$200. down when the deed was drawn up, and in five years time we was to have the balance due us.

Q.23-Do you remember anything else?

A.23-We was to have possession until paid --- that was in the contract, and we was not to take a stick of ~~wood~~ timber off of the place and they was not until the land was paid for, outside of farming purposes and for wood -- that was in the contract.

Q.24-Was there anything else in it?

A.24-Well, there was a right smart, but I can't recollect everything that was in it.

Q.25-Was there no provision for ~~the land being~~ a lien being retained on the land to secure the five years note?

A.25-No, sir. We was to have possession of it until it was paid.

Q.26-Was there not a provision in it with regard to having the land surveyed?

A.26-Yes, sir.

Q.27-Did it not state what sort of a deed was to be made?

A.27-Yes, sir.

Q.28-Was there any description of the land in it?

A.28-I don't recollect whether there was or not.

Q.29-Do you remember how it commenced?

A.29-No, sir, I don't.

Q.30-Was it dated?

A.30-Well, I don't recollect that.

Q.31-You say it was all on one side of a sheet of paper?

A.31-Yes, sir, as well as I can recollect. And Yeary was call up as a witness to the contract, and I think was call ed on to sign his name, and I think he did, but I won't be positive that he signed his name. I think Mr. Gilly called on him and he said "it is not much use,"but he went on and signed the contract.

Q.32-Did he sign it with pen or pencil?

A.32-He signed it with pen just as he was writing the contract.

Q.33-Now let us come to the deed. Before whom did you acknowledge that deed?

A.33-It was said to be Mr. Bullitt or Mr. McDowell. I did not know the man, and don't know them yet.

Q.34-Do you know which one of the two took your acknowledgment?

A.34-No, sir, I do not, but to the best of my knowledge I believe it was Mr. McDowell.

Q.35-You signed the deed did you not?

A.35-Yes, sir.

Q.36-How did you sign it?

A.36-They wrote my name and I took hold of the pen and made my mark.

Q.37-How did your husband sign it?

A.37-The same way.

Q.38-Was not the deed read to you before you acknowledged it?

A.38-Yes, sir, I believe it was, as well as I can recollect.

Q.39-Was the deed read to you for \$18.00 an acre?

A.39-Yes, sir it was, as well as I can recollect.

Q.40-Who read it to you?

A.40-Well, one of you men, I won't say which. It was either Mr. Bullitt or Mr. McDowell.

Q.41-It was the one who took your acknowledgement I suppose, was it not?

A.41-Yes, sir, I believe it was, but I won't be positive.

Q.42-Then if he read the deed to you at \$18.00 an acre and it really reads for \$20.00 an acre, he read it wrong did

he not?

A.42-Well, it seems that he read it wrong. He might have read it right, but it seems to me like it was wrong.

Q.43-Are you quite sure that the deed was read to you at \$18.00 an acre?

A.43-Well, it seems that it was. I won't be sure, but it seems that way.

Q.44-You say the contract was for \$200.00 cash and the balance in five years?

A.44-Yes, sir, at or before five years. We was to give possession any time they come on and paid for the land.

Q.45-You say Gilly took the notes over to the old ~~man~~ gentleman (old man Jones) to sign?

A.45-Yes, sir, he did. I never saw old man Jones --- neither one of us saw him. He took it over to the Central Hotel. I don't know who kept the Hotel then, and the office was right on the corner by the River.

Q.46-You say he took two notes over to be signed?

A.46-He took two papers, I don't know whether they were notes or what they was. They were said to be notes. I wondered to myself what the two was for when Gilly kept one.

Q.47-What was done when Gilly came back with the two notes.

A.47-I don't know exactly what was done. They took a pen and done something. I didn't pay any particular attention to what was done then.

Q.48-Did your husband put his cross mark on the back of one of them?

A.48-If he did I never heard it mentioned. If he did he did not know what it was, whether it was a deed or what it was

Q.49-Then as I understand you, you won't say positive *ly*

that he did not put his mark on the back of one of those papers?

A.49-Well, if he did I never saw him.

Q.50-Where were you when these two papers were handed to either Bullitt or McDowell?

A.50-I was sitting right in the office.

Q.51-Well, if he did put his cross mark on the back of one of them, and you were sitting in the office you would have seen him would you not?

A.51-Well, it looks very much like I would have seen him. It looks like a fool could have seen as plain a thing as that

Q.52-And still you say you did not see him?

A.52-No, sir.

Q.53-Now, why should there have been two papers if the trade was \$200.00 cash and the balance was all to go to your husband, payable in five years?

A.53-Well, why would there have been without Gilly was trying to get one paper --- to take undermining hold~~x~~ on us and get the \$140.00 that he is claiming.

Q.54-Well, did you say anything at the time about there being two papers?

A.54-No, sir, I did not.

Q.55-Well, what did you think about there being two papers?

A.55-Well, I had very queer thoughts. I thought Gilly was trying to get something that was not right, but yet I didn't know.

Q.56-Well, if you thought at that time that Gilly was trying to get some under-mining hold on you, why did you not say something about it?

A.56-Well, if a man talks as fair to a person as he talk-

ed to us they would have taken him to be a gentleman.

Q.57-Then, as I understand you, you took him to be a gentleman, but at the same time you thought he was trying to do some under-minding work?

A.57-Yes, sir, I did.

Q.58-Well, if you thought he was doing some under-minding work, why did you not say something about it at the time?

A.58-Well, I thought I would let it alone and let it come out on him (Gilly) --- I thought it would come out on him in the five years.

Q.59-You are quite sure are you that the deed was read to you by the man who took your acknowledgment, and that he read it at \$18.00 an acre?

~~xx59x~~

Question objected to because the same question has been asked before.

H. A. W. Skeen.

A.59-Well, to the best of my knowledge, I think it was.

Q.60-I now ask you to file as exhibit No. 3 another plat showing the relative location of the Hobbs and Hyatt tracts just now made by John Gilly?

A.60-I now file the same.

Q.61-The \$200.00 in cash and the note that your husband got, together amounted to \$18.00 an acre for the land, did they not?

A.61-Yes, sir, and something over, but I dis-remember what over.

Q.62-The land was supposed to contain sixty acres was it not at that time?

A.62-60 acres more or less.

Q.63-The note that your husband got was for \$880.00 was it

it not?

A.63-Well, sir, that was what they said it was for. I have not read it.

Q.64-Well, \$1080.00 is just \$18.00 an acre for sixty acres is it not?

A.64-I don't know. I aint no scholar --- I can't count up anything.

The question and answer objected to because it depends upon calculation, and can be ascertained by calculation.

H. A. W. Skeen.

Q.65-Now, Mrs. Hobbs, is it not a fact that you and your husband were perfectly willing to sell this land at \$18.00 an acre; that you got that much for it; that you knew that the \$120.00 note was Gilly's commission; that your husband assigned it to him knowingly and willingly for his commission, and that since then you people have come to the conclusion that you would like to keep him out of that money?

A.65-Well, if we could not get more than \$18.00 an acre we was willing to let it go at that price. I don't know what we got for it. It was said we got \$18.00 an acre for it. But as to the \$120.00 being his commission, we knew nothing about that, for he claimed that he did not want any commission. My husband did not willingly and knowingly assign the note to Gilly as his commission. We have not since that come to the conclusion that we wanted to keep Gilly out of the money. He is trying to keep us out of it instead of us keeping him out of it. *If he hadnt gone on and got \$20.00 and ack and told us he only got \$18.00, we would have been perfectly satisfied.*

Q.66-If Jones had had to pay these notes in money and you had gotten the \$880.00 note paid and Gilly had gotten his \$120.00 note paid you would have been perfectly satisfied

with it?

A.66-Well, it seems that we would.

Q.67-The real trouble is then, that you are afraid that Hobb's land will be sold from him to pay Gilly's note?

A.67-No, sir, I am not afraid of it.

Q.68-Well, what is the trouble?

A.68-There is not anything only Gilly is trying to collect something that is not right. There aint any trouble with me at all, only a man trying to collect something when I know it is not just --- that is all the trouble there is--- I know it is not just and he knows it if he would just swear to the contract.

Q.69-Yet you say that if he had told you at the time that he had sold it for \$20.00 an acre provided he could keep the \$120.00 that you would have been perfectly willing?

A.69-If it had been his contract we would have been perfectly willing for him to keep the \$120.00. I am not willing to anything but the written contract.

Q.70-What became of thw two notes after either Bullitt or McDowell wrote on the back of one of them in the office?

A.70-Either Mr. Bullitt or Mr McDowell handed me one of them and the other to Mr. Gilly, but I do not know what Gillys was. I just thought it was a note --- It was said to be a note. I don't know what it was.

Q.71-Did you want to make the sale to Jones or not?

A.71-Well, I don't know anything about that --- I never saw Jones and don't know nothing about it. Gilly never asked us to make the sale to Jones, he asked us to make it to him.

Q.72-Were you willing to make the sale?

A.72-How would a body want to make the sale to a man who they never saw.

Q.73-You seem to have done so.

A.73-We made it to Gilly.

Q.74-What I want to know is, whether you and your husband were willing to make the sale, or whether you did it unwillingly?

A.74-We made it willingly.

Q.75-You were satisfied, then, to get \$18.00 an acre for the land, were you?

A.75-Yes, sir, if we could not get any more we were perfectly ~~willing~~ satisfied, if that was the contract --- the written contract between us and Jones and Gilly.

Q.76-You say you suspected at the time when Gilly got the other note that he was doing some sort of under-hand work?

A.76-Well, I thought he had a trick some way or other in it, but I did not know what it was.

Q.77-Now, if the deed was read to you, and read correctly so as to show that the whole consideration was at the rate of \$20.00 an acre, then you would have known exactly what Gilly was about in getting the other note, would you not?

A.77-Well, it seem that way, but the deed was not read that way. Nothing was said about the \$20.00 an acre.

Q.78-Do you mean to say that the deed was read to you wrong?

A.78-I don't know whether it was or not. I cannot read and don't know whether it was read right or not.

Q.79-Was the deed read to you this way: "In consideration of \$1200.00, \$200.00 to be paid cash and the balance to be paid in five years, evidenced by a note of \$880.00 and another note of \$120.00."

A.79-I don't recollect ~~that~~ that it was read that way.

Q.80-Was it read to you as follows: "In consideration

of \$1080.00, \$200.00 cash and \$880.00 in five years?"

A.80-I don't recollect.

Q.81-Or was the deed read to you, "In consideration of \$20.00 an acre, \$200.00 paid cash and the balance in five years?"

A.81-Well, I can't just recollect whether it was or not, but I think it was.

Q.82-Did your husband hear the deed read?

A.82-I don't recollect whether he did or not. I am not sure that he did, or that he did not.

Q.83-Who was it that made the cross-mark when he held the pen.

A.83-I don't recollect that. I don't know as I saw him hold the pen --- I don't know as he was called on.

Q.84-You were in the same room at the time?

A.84-Yes, sir.

Q.85-Well, now, say whether he made his mark on the deed or did not make it?

A.85-Well, I am not going to say. What is the use for a body to swear to anything when they are not satisfied of it. I am not satisfied that he did and I am not satisfied that he did not. If he did I know he did not know what it was or what he was signing.

Q.86-If he did assign the note to Gilly, what did he do it for?

A.86-I don't know that.

Q.87-If he did do it, why should he have done it?

A.87-I don't know that neither.

Q.88-Well, if he did do it, would not either you or your husband have asked questions about it at the time, or made some objection to doing it?

A.88-Well, it looks like we would.

Q.89-You are pretty well satisfied, then, that he did not make his mark on the back of the note that Gilly kept?

A.89-Yes, sir.

Q.90-Do you remember who wrote the endorsement on the back of that note?

A.90-No, sir.

Q.91-Was it not McDowell?

A.91-I don't know.

Re-Direct

Q.92-I now show you exhibit No. 3 filed with your deposition purporting to show the situation of the Hyatt and Hobbs land. Please examine the same and state if it is correct?

A.92-It is not.

Q.93-Does the railroad run farther through your land than the Hyatt land?

A.93-~~xxxx,xxxxxxx know.~~ Yes it does for it runs through every bit of ours.

Q.94-Does any of the Wells land lie north of your tract?

A.94-It don't.

Q.95-Whose land lies just above your land?

A.95-Hyatt's.

Q.96-After the deed was read over to you, and your husband had signed and acknowledged it, did you ever see it again?

A.96-No, sir.

Q.97-The deed was just read one time was it?

A.97-Yes, sir.

Q.98-At the time the deed was being written, and the notes, who did the talking to Mr. Bullitt or McDowell, Gilly or you or your husband?

A.98-Mr. Gilly.

Q.99-He was representing you and your husband, was he not?

X A.99-Yes, sir, I suppose he was.

RE-CROSS EXAMINATION.

Q.1 -Does not the Ellington Wells tract adjoin your husbands land?

A.1-It does.

Q.2- Does not the Louisville & Nashville Railroad track run through a part of the Hyatt land?

A.2 -Yes, sir.

Q.3 -Does it not run nearly paralel with, and on the north side of the River?

A.3-Yes, sir.

Q.4-Does not the Hyatt tract cross the River?

A.4 -Yes, sir.

Zion Hobbs, another witness of lawful age, being first duly sworn, states as follows:

Q.1 -State your age, residence and occupation?

A.1 -I am 39 years old, occupation farmer, and I live in Lee County.

Q.2 -Are you the Zion Hobbs who entered into a contract with John Gilly authorizing him to sell your land?

A.2-Yes, sir.

Q.3 -State your contract with said Gilly?

A.3 -My contract was that he take my land and sell it for --- he was not to sell it under \$18.00 an acre and all over that I was to have.

Q.4 -Were you to pay him any commission for making sale of said land?

A.4 -No, sir, I was not.

Q.5 -Why did he offer to sell your land without charging you a commission?

A.5 -He wanted to square off the Hyatt land, and could sell the Hyatt land better.

Q.6 -Who were present when you entered into said contract?

A.6 -Mr. Yeary and Mr. Gilly and my wife.

Q.7 -Who wrote said contract?

A.7 -Mr. Gilly.

Q.8 -State if it was written with ink or with led pencil?

A.8 -I don't recollect.

Q.9 -How long was it after you made this contract until you made a deed?

A.9 -We made the contract along about the first of March and the deed was written the 21st of March.

Q.10-Did John Gilly ever tell you ^{what} he had sold your land for per acre?

A.10-No, sir, he never told me what he sold it for.

Q.11-Where was you when you made the deed to said land?

A.11-I was up here in the town of Big Stone Gap.

Q.12-At whose instance and direction did you come to Big Stone Gap to make the deed? Who got you to come to Big Stone Gap to make the deed?

A.12-Mr. Gilly, as far as I recollect.

Q.13-Do you know who wrote the deed?

A.13-No, sir, I don't know exactly. It was either Bullitt or McDowell.

Q.14-Was the deed read over to you?

A.14-I don't recollect whether it was or not.

Q.15-You acknowledged the deed did you?

A.15-Yes, sir, I acknowledged it.

Q.16-What was the amount of money you were to get for

your land?

A.16-Well, I was to get \$18.00 an acre for it, or if it was sold for any more than that I was to get it.

Q.17-At the time you made the deed, did you believe that you was getting \$18.00 an acre?

A.17-Yes, I believed I was getting \$18.00.

Q.18-Did you know then that Gilly was claiming a commission?

A.18-No, sir, I did not.

Q.19-Do you know who wrote the notes?

A.19-No, sir, I don't know. It was either Bullitt or McDowell.

Q.20-Do you remember of endorsing the \$120.00 note to John Gilly?

✓ A.20-I have no recollection of it. If I did I did not know what it was or what I was doing.

Q.21-Did John Gilly before the \$880.00 note was delivered to your wife, explain to you that there had been a note for \$120.00 executed by Jones to you, and that it was for his commission?

✓ A.21-No, sir, I think not.

Q.22-When did you first learn that Gilly sold your land for \$20.00 an acre?

11 A.22-About two years ago as far as recollect.

Q.23-You always thought that he had sold it for \$18.00 an acre?

A.23-Yes, sir, I always thought he had sold it for \$18. an acre.

Q.24-At the time Gilly wrote the contract authorizing him to sell your land, at your house, did he read it over to you?

A.24-I don't recollect whether he did or not. It seems

like he did.

Q.25-Did you ever authorize John Gilly to sell your land at \$16.00 an acre?

A.25-No, sir, I never authorized him to sell it for that

Q.26-Did you at any time promise to pay him a commission for selling same?

A.26-No, sir, I never promised him a commission.

Q.27-Can you read or write?

A.27-No, sir.

Q.28-Who paid for writing the deeds and surveying the land?

A.28-Well, I paid for surveying the land, and Jones paid for writing the deed.

CROSS-EXAMINATION.

Q.1 -You were here yesterday and heard Gilly and Bullitt and McDowell all testify, and have been here today and heard Yeary and your wife testify, have you not?

A.1 -Yes, sir.

Q.2 -What was in the contract that Gilly wrote except the amount per acre at which he was to sell the land?

A.2 -I don't recollect.

Q.3 -Don't you recollect anything in it except that?

A.3 -My recollection is that I was to keep the land till it was paid for, and was not to cut any timber only for farming, and they were not to use any.

Q.4 -Who do you mean by they?

A.4 -Jones.

Q.5 -Was there anything in it about surveying the land?

A.5 -Yes, it was in the contract that I was to have it run out.

Q.6 -Was there anything in it about your retaining a lien on the land to secure the note?

A.6 -I don't recollect that there was.

Q.7 -At what time did the contract provide that you were to have the land run out?

A.7 -I was to have the land run out after the deed was made, as far as I recollect.

Q.8 -Did the contract say, that if the land fell short you were to give Jones credit for it?

A.8 -Yes, sir, it did.

Q.9 -Did it provide that if the land ran over 60 acres Jones was to pay you therefor?

A.9 -Yes, if it run over I was to get more.

Q.10-You are sure, are you, that this provision about the land falling short or running over was in the contract between you and Gilly?

A.10-Yes, that was in the contract, as far as I recollect

Q.11-And you are also sure, are you, that it provided that you were to cut no timber except farming timber?

A.11-Yes, I am sure of that.

Q.12-Are you also sure that it provided that Jones was not to cut any timber until the land was paid for?

A.12-Yes, sir, as far as I recollect that is right.

Q.13-Did you know that Gilly was going to sell the land to Jones when you made the contract with him about the first of March?

A.13-He said he was going to sell it to Jones, as far as I recollect.

Q.14-Have you not got confused in your mind what was in the contract and what was in the deed when it came to be written?

A.14-It seems like I have.

Q.15-Well, now, how much can you swear positively of what you have been talking about was in the contract that Gilly wrote at your house?

A.15-All I know is, Gilly was to take the land and sell it for \$18.00 an acre and would not sell it for any less, and all over \$18.00 I was to have.

Q.16-Do you remember anything else that you can swear positively was in the contract?

A.16-There was also in it, as far as I can recollect, that it was to square off the Hyatt land.

Q.17-Was there anything else in it that you recollect?

A.17-He was to have no commission, that was in it.

Q.18-Well, was there anything else?

A.18-No, sir, I don't recollect anything else.

Q.19-You like the rest of your witnesses seem to be very positive that the contract stipulated that if Gilly got over \$18.00 an acre you were to have it, and that he was to get no commission, but what else was in it seems to be rather hazy; you have all agreed amongst yourselves, have you not, that the contract certainly read that you were to get all over \$18.00 and that he was to get no commission.

Plaintiff by counsel objects to the foregoing question, because it is calculated to confuse and mislead the witness.

H. A. W. Skeen.

A.19-That is right.

Q.20-There seems to be some minor points about this contract which have been gone over very fully, and on which Mr. Yeary and your wife slightly dis-agree. Mrs. Hobbs is positive that the contract was written on a large sheet of paper with a red stripe down one side --- legal cap paper --- and

Mr. Yeary's impression is that it was on what he called Fools Cap paper. Now, which do you say it was on?

A.20-I don't recollect what it was on.

Q.21-Mr. Yeary's impression was that the paper came from your house, while Mrs. Hobbs thought that Gilly brought the paper with him. Now, what do you say about this?

A.21-It seems to me like Gilly furnished the paper.

Q.22-Mr. Yeary thought that the contract was written in led pencil, while your wife thought that it was written in black ink. Now what do you think it was written on?

A.22-As far as I recollect about it, it was written in ink.

Q.23-Was it written with a pen or with a pencil?

A.23-With a pen as far as I recollect.

Q.24-Whose pen was it?

A.24-It was my boy's pen as far as I recollect.

Q.25-You said in your direct examination that the contract was made about the first of March, while your wife said that it was written a week or less before the deed was signed up. Now, which one of you is right?

A.25-As far as I recollect about it it was the first of March.

Plaintiff by counsel objects to the foregoing question and answer, because it is a matter of recollection between witnesses.

H. A. W. Skeen.

Q.26-When was the Hyatt land sold?

A.26-It was sold, as far as I recollect, about the same time mine was.

Q.27-Do you mean that day that you made the deed?

A.27-It was sold after I made the deed, as far as I rec-

ollect.

Q.28-Then your wife was wrong when she said that ~~the~~ Hyatt made a title bond the same day that you and she made the deed to Jones?

The foregoing question objected to because it is a matter of recollection between witnesses, and because wholly irrelevant and immaterial.

H. A. W. Skeen.

A.28-No, she was not wrong.

Q.29-Well, then why do you say that Hyatt sold his land after you made your deed?

A.29-As far as I recollect he sold his land about the same time I sold mine.

Q.30-Well, when you put the date of the contract between you and Gilly as being the first of March you had the Hyatt sale in your mind did you not?

A.29-Yes, sir.

Q.30-You wanted to show that the Hyatt land had not been sold at the time you made the contract with Gilly did you not?

A.30-I wanted to show that the Hyatt land had not been sold when I made the contract with Gilly.

[Counsel for the plaintiff asked the witness if he understood the questions, and he says he don't understand all of them.]

Q.31-Well, now, I will ask you again which is right ^{you} when you say that this contract with Gilly was made the first of March, or your wife when she said it was made less than a week before the deed was made?

A.31-It seems to me like my contract was the first of March.

Plaintiff by counsel objects to the foregoing an-

question, because the same question has been asked twice before.

Q.32-When you say that the Hyatt land was sold about the time that yours was, which time did you refer to, the time of the contract with Gilly or the time that you made your deed?

A.32-I mean the time I made the deed.

Q.33-Did Mrs. Hyatt start to come up to Big Stone Gap with the rest of you the day you made your deed?

A.33-Yes, sir.

Q.34-Now, if the Hyatt land had not been sold previous to that time, why did she start to come up here?

A.34-Why she started to come up here to make the deed.

Q.35-Then Hyatt had contracted his land before that day, hadn't he?

A.35-Yes, sir, he had contracted before that day.

Q.36-How long before do you know?

A.36-No, sir, I don't recollect.

Q.37-You say Gilly read the contract to you after he had written it?

A.37-Yes, sir. Or pretended to read it.

Q.38-If Gilly simply wanted your land in order to sell the Hyatt tract to Jones, and if you were willing to take \$18.00 an acre if he could get no more, what object could he have had in selling it for \$20.00 an acre?

A.38-I don't know unless he wanted to take an under-mining hold on me.

Q.29-Now, as a matter of fact when Gilly came to get you and your wife to come to Big Stone Gap and make the deed, did not he tell you that he had sold the land for enough for you to get \$18.00 an acre, and for him to get his 10 % commission?

A.29-No, sir, he did not tell me.

Q.30-Who wrote the contract?

A.30-Mr. Gilly wrote it.

Q.31-What was it written with?

Question objected to because the same question has been asked twice.

Skeen.

A.31-It was written with pen and ink, as far as I can recollect.

Q.32-Where were you when the deed was written?

A.32-I was up here at Big Stone Gap in the office of Bullitt and McDowell, a little frame building on the river bank.

Q.33-Who wrote the deed?

A.33-As far as I recollect about it, Bullitt wrote it.

X Q.34-Who wrote the notes?

A.34-I don't recollect.

Q.35-You heard Mr. Bullitt testify yesterday, didn't you?

A.35-Yes, I heard him testify.

Q.36-Who took your acknowledgement to the deed?

A.36-It was taken before Bullitt or McDowell, I don't know which.

Q.37-Who wrote the assignment on the back of the note that Gilly got?

A.37-Bullitt or McDowell, I don't know which one wrote it.

Q.38-Where were you when this assignment was written?

A.38-I was standing in the door, or somewhere, as far as I recollect about it.

Q.39-Did you make your mark to that assignment?

A.39-No, sir, I did not make it, as far as I recollect about it.

Q.40-Will you swear positive that you did not make your

mark?

✓ A.40-If I did I did not know what it was or what I was doing.

Q.41-That is the same language that your wife used in her deposition, but you don't answer my question. I ask you if you will swear positively that you did not make your mark to that assignment on the back of that \$120.00 note?

✓ A.41-No, sir, I did not make it as far as I recollect about it. If I did I did not know what it was or what I was doing.

Q.42-Who took the notes over to the Hotel to get Jones to sign them?

A.42-John Gilly took them over as far as I can recollect about it.

Q.43-Who got the two notes after Jones had signed them?

A.43-Johny got one and my wife got one.

| Q.44-Why did you let John Gilly have one?

/ A.44-At that time I did not know that he did get one.

Q.45-Didn't you say in your corn field to John Gilly late this last winter or in the early part of this spring, that you thought that he was to get his note direct from Jones, and that you were not to assign it over to him?

A.45-Not that I recollect of.

Q.46-Did you have any such conversation as that with him?

A.46-He come over there and talked some about it, but I don't recollect anything about what it was.

Q.47-But the talk was about his note was it?

A.37-It was something about a note as far as I recollect about it.

Q.38-And your point was that he oughtn't to hold you on the note, and ought to have taken it direct from Jones, was it?

not?

~~xx88x~~ The foregoing question is objected to, because it is arguing with the witness.

H. A. W. Skeen.

A.38-I know he ought not to hold the note against me --- he was not to have any.

Q.39-If he could have gotten his money direct from Jones without coming on your land for it, it would have been alright would it not?

A.39-Yes, sir, I would have been willing.

Q.40-Will your land sell now for enough to pay your \$880.00 note and Gilly's note?

A.40-No, sir, I don't hardly think it will.

Q.41-That is the real milk in the cocoa-nut, is it not?

A.41-I don't understand that question.

Q.42-That is the real trouble, is it not, that you are afraid that the land won't bring enough to pay the balance of your note if Gilly gets his money out of it?

A.42-It won't sell for enough to pay mine and his.

Q.43-That is the trouble, is it not?

A.43-Yes, sir, I think it will not today bring enough to pay mine and his notes.

Q.44-That is the real trouble, is it?

A.44-Yes, sir, that is the trouble. I don't think it will sell for enough to pay me and him both.

Q.45-You did not make any objection at the time that Gilly kept one of the notes, did you?

A.45-I don't recollect whether I made any objection or not. He knew he was not to have nothing.

Q.46-And you say that you knew that when he kept that note he must have been up to some underminind work?

A.46-It seems to me like he was.

Q.47-Well, why didn't you make some objection at that time?

A.47-I don't recollect.

Q.48-Did you say anything to either Bullitt or McDowell about Gilly having no right to the note?

A.48-No, sir, I did not say anything.

Q.49-Well, you were all together in their office, were you, at the time?

A.49-Yes, sir, we were together in the office.

Q.50-Now, if you were all together in their office signing and acknowledging deeds, and seeing Gilly keep a note that you knew he had no right to ~~tom~~ and if you and your wife both knew that he was up to some undermining trick, is it not rather curious that you should have made no objection --- not mentioned the fact to either Bullitt or McDowell, and have gone away apparently satisfied?

A.50-Yes, it would seem like it was.

Q.51-How do you explain this?

A.51-I took him as a friend to me and it looks like he was not.

Q.52-Now, isn't the explanation this: that you were satisfied at the time; that you were willing to sell for \$18.00 an acre, and that you were willing that he should have as his commission the \$120.00 note, and isn't that the only rational explanation of your own statement of your conduct?

Plaintiff by counsel objects to the foregoing question, because it seeks an opinion from the witness.

H. A. W. Skeen.

A.52-I was satisfied to sell for \$18.00 an acre if he could not get any more.

Q.53-But you knew at that time that he had gotten more, did you not?

A.53-I did not know what he got at that time, as far as I can recollect about it.

Q.54-You knew, didn't you that the \$200.00 that you got and the note that you got made up \$18.00 an acre?

A.54-Yes, sir, I knew that.

Q.55-And you knew that the note that he kept was some additional part of the purchase price, didn't you?

A.55-No, sir, I did not know what it was for.

Q.56-Well, why did you say that you thought at that time that he was up to some ~~xxxx~~ undermining trick?

A.56-Because he was not to have nothing.

Q.57-Well, why did you think he was up to some trick if you did not know that the paper that he kept was one of the notes that Jones had signed?

A.57-He was not to have nothing.

Q.58-Then, you did know that what he kept was one of the notes, didn't you?

A.58-No, sir, I did not know it.

Q.59-Well, why did you think that he was up to some trick?

A.59-Because he was not to have nothing.

Question objected to because the same question has been asked about six times.

H. A. W. Skeen.

RE-DIRECT EXAMINATION.

Q.1 -In answer to a question in your cross-examination by H. C. McDowell, Jr. you stated that yourself and wife and Mr. Yeary had agreed to ~~xxx~~ swear that the contract between you and Gilly was as stated by each of you. You did not mean

to say that you had agreed to swear that that was the contract unless it be the contract?

A.1 -No, sir.

~~Qx2xx~~ Question objected to as leading.

H. C. McDowell.

Q.2 -What you meant to say was, that you had each said that that was the contract, but you had not agreed to swear to anything except the true contract?

A.2 -That is what I meant.

Objected to as leading and argumentative.

H. C. McDowell.

Q.3 -In answer to ^a ~~xxx~~ question~~x~~ on cross-examination you stated that you thought that John Gilly was trying to take undermining hold on you. You did not mean to say that you thought that he was trying to take an undermining hold on you when you executed the deed, but what you meant to say was, that since you learned that he held the \$120.00 note you have come to the opinion that he did do you a wrong?

A.3 -Yes, sir.

Question objected to, not only because leading, but because it is neither more nor less than counsel for plaintiff telling the plaintiff what to say in his deposition.

McDowell.

And further this deponent saith not.

Addition to the deposition of J. F. Bullitt, Jr. taken by consent on behalf of defendant, John Gilly.

Q.1 -Did you take the acknowledgement of Zion Hobbs and his wife to the deed that they made to W. D. Jones mentioned in this controversy?

A.1 -I was a Notary at that time, but I do not remember whether I took the acknowledgement or not.

Q.2 -If you did take it, did you take the grantors acknowledgement without reading the deed to them, or making them understand fully its purposes?

A.2 -In case of educated people it is not my custom to read over to them a deed, but with un-educated people it is my universal habit to read the deed to them unless I am sure that some one else had read it to them and that they fully understood it. I think Hobbs and his wife are both uneducated people and appear to be more or less ignorant, and if I took their acknowledgement of the said Hobbs and wife, I think it is certain that I would have read the deed to them before taking the same.

CROSS-EXAMINATION.

Q.1 -Don't you think that Zion Hobbs is a very ignorant man?

A.1 -From what I have seen of him I should say that he is.

Additional deposition of H. C. McDowell, Jr. taken by consent.

I was at the time the above mentioned deed was taken, a Notary Public, and it is possible that I may have taken the acknowledgement thereto, but I have no positive recollection that I did or did not. However, if I did take the acknowledgement I am certain that I either read the deed to the parties, or that I knew that it had just been read to them. It has always been my custom, and a matter that I have always been particularly careful about, not to take the acknowledge-

ment of people who were of such character that they might afterwards see fit to claim that they had not understood the deed, without reading it over to them and making them fully understand what the deed said. Especially has this been my custom wherever there was an acknowledgement of a woman taken by me. And in conclusion I will say, that if I took the acknowledgement to that deed, I am as positive as one can be of such a thing, that I read the deed over to them and made, or tried to make, them understand its contents, and that I thought they did understand the deed when they acknowledged it.

CROSS-EXAMINATION.

Q.1 -Don't you consider Zion Hobbs a very ignorant man in regard to business?

A.1 -Yes, he is. But not lacking in some shrewdness, I will say.

It is hereby agreed that the signatures of the above witnesses are waived.

H. C. McDowell, Jr.

H. A. W. Skeen.

Virginia,)
) To-wit:
Wise County.)

I, Jos. L. Kelly, a Notary Public in and for the state and county aforesaid, hereby certify that the foregoing depositions of Frank G. Yeary, Zion Hobbs and Mary Hobbs for the plaintiff and of J. F. Bullitt, Jr. and H. C. McDowell Jr. for defendant Gilly, were taken before me on June 2nd, 1894, at the place stated in the caption thereto, and for the purpose of being read in the chancery cause of Zion Hobbs vs.

J. C. Chance, executor, et al in Lee Circuit Court, all of the same having been taken by consent, and all of the witnesses having been duly sworn before deposing, and by agreement the signing of the said depositions is waived.

Witness my hand this 6th day of June, 1894.

Jos. L. Keely

Notary Public for Wise County, Va.

Time taken five hours. Notary's fees \$3.75, not paid.

Zion Hobbs

Depositions

for

Jos Gilly

& for

Zion Hobbs

J. C. Chance, et al

June 8. 94

Rec'd within

by hands of

H. McDowell Jr

Filed June the 8th 1894

A. B. Munsey
Clerk

To the Hon. W. T. Miller Judge
of Lee County Circuit Court.

The undersigned, Special
Commissioner, in the Chancery
Cause of Groe Hobbs against
Jas. Charles Executor &c., in pursu-
ance of a decree rendered
on 16th day of June, 1894, in
said Cause, begs leave to
report unto your Honor
that after having advertised
for thirty days the terms
time and place of sale,
as required by said decree,
proceeded to sell and did sell
at public auction to the
highest bidder, at the front
door of the Court-House
of Lee County, Virginia, on
the 20th day of August, 1894,
that being County Court day,
the tract of land mentioned
and described in the bill
and proceedings in said Cause,
subject to the right of way
of the Loudoun & Ashland
Railroad Company, and
at which sale Groe Hobbs

became the purchaser of
said tract of land at the
price of \$514 ¹⁰/₁₀ -

Your commissioners will
state that said ^{purchaser} price just
covered the said fine & Hobbs'
judgment against said
J. B. Chance Exr. of Wm D.
Jones deceased, and costs
of said suit and expense
and Commission of sale
and as your Honor had
by decree ordered in
said cause decreed said
Hobbs debt to be the first
lien upon said tract of
land, your commissioners
did not require said pur-
chaser, John Hobbs, on ~~any~~
sale day to pay any cash
except the cost of said suit,
which he had not previously paid,
and expense of sale and
commission of sale, and
your commissioners did
not require said Hobbs
to execute his note for any
part of the purchase price

as the return of said purchase price after paying the cost of suit and expense of sale was due to and owing to said Hobbs. Your Commission on as payment of said purchase price. ~~has been~~ will credit the judgment which said John Hobbs has against said J. C. Chance Egoi as aforesaid, or in other words make said judgment also paid.

Respectfully,

W. A. W. Stone

Special Comm.

John Hobbs
vs. { Report of
 { Comis Dele

J. C. Chauncey

Filed October the 18th 1894
A. B. Munnery Clerk

To W. J. Miller Judge of Lu
County Circuit Court.

The undersigned, Special Commissioner, in pursuance of a decree heretofore rendered, in the Chancery Cause of John Hobbs against J. B. Chalmers Esq. has the honor to report unto your Honor that he has made conveyed the land mentioned and described in the bill and proceedings of the above Chancery Cause to John Hobbs, by deed of Special Warranty, and herewith files same for your Honor's inspection.

Respectfully,
H. A. W. Allen
Special Comm.

John Hobbs

as shown Report
of seed

J. H. Chance Exam
ed

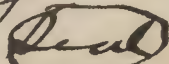
Filed June the 4th 1895


W B Munsey
Clerk

H. A. W. Sheen, Attorney,
Office in Sheen Building,
Shawnee Avenue.

Big Stone Gap, Va., 189

We the undersigned do hereby make
appoint and constitute R. L. Penning
our atty. in fact to execute, sign
and acknowledge a commission
bond for us in the case of
John Hobbs vs J. B. Chance Executors as
provided for in a decree rendered
in said case in Lee County Cir-
cuit Court, April 16, 1894. ~~R. A. W. Sheen~~
Witness our hands & seals. This July
6, 1894.

H. A. W. Sheen 

J. B. Sheen 

Virginia Wise Co Inst;

I B. O. Hangeron, a Justice of the Peace
in and for the aforesaid County and
State do certify that H. A. W. Sheen
and J. B. Sheen whose names are
signed to the above writing bear-
ing date on the 6th day of July
1894, have acknowledged the same
before me in my aforesaid County
Given under my hand, this the 6th
day of July 1894.

B. O. Hangeron J. P.

Virginia Lee County to wit:

In the Office of the Clerk of the
Said County, the 7th day of July 1894; this power
of attorney was presented and together with the
Certificate thereto annexed, admitted to record.
Teste: J. V. J. Richmond Clerk

J. L. Hemmington
Attorney

Attest: J. V. J. Richmond Clerk

Recorded in Book

Book 30 p 184

J. V. J. Richmond
Clerk

Ex Ammunt

Virginia Wise County Road:
I B. O. Fungerson a Justice of The peace
for Wise Co. Va, do certify that
H. A. W. Shum and J. B. Shum per-
sonally appeared before me
in my County aforesaid and
made oath that they are each
worth over \$1000⁰⁰ above all
liabilities. Given under my hand
this the 6th day of July, 1874.

I B. O. Fungerson J. P.
for Wise Co. Va

Know all Men by these Presents, That we N. H. W. Skem - and
J. B. Skem
 are held and firmly bound unto the Commonwealth of Virginia, in the sum of One
Thousand & - dollars, to payment whereof, well and truly to be made to
 the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs,
 executors, and administrators, jointly and severally, firmly by these presents, hereby waiving the
 benefit of our homestead exemptions as to this obligation, and any claim, right, or privilege to
 discharge any liability arising under this bond, or by virtue of said office or trust, in any cur-
 rency, funds, counter claims or offsets other than legal-tender currency of the United States.
 Sealed with our seals, and dated this 17th day of July-
 one thousand eight hundred and 94.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bound N. H. W. Skem
Skem
 shall faithfully perform the duties of his office or trust, as Commissioner
in Chancery
 under a decree of the Circuit Court of the County of Lee, pronounced on the 16th day
 of June, 1894, in the suit therein depending under the name and style
 of J. C. Chace vs. &c. et al.
vs.
J. C. Chace vs. &c. et al.

then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and acknowledged in the
 presence of

A. B. Munsey Clerk

N. H. W. Skem - [SEAL.]
J. B. Skem [SEAL.]
Robert L. Pennington atty in fact
for N. H. W. Skem [SEAL.]
and J. B. Skem

In the Clerk's Office of the Circuit Court of the County of Lee.

This day _____
 suret on the above bond, made oath before me A. B. MUNSEY, Clerk of the Circuit Court
 of the County of Lee, that _____ estate after the payment of all _____ just
 debts, and those for which _____ bound as securit for others, and expect to
 have to pay worth the sum of _____
 _____ dollars.

Given under my hand this _____ day of _____ 189 .

A Copy Teste Teste: A. B. Munsey Clerk
A. B. Munsey Clerk

A. A. W. Skene -

J. B. Skene

to { COMMISSIONER
BOND.

Commonwealth.

Guine & Co. -
v.s.

J. C. Chance & Co.

Powells River

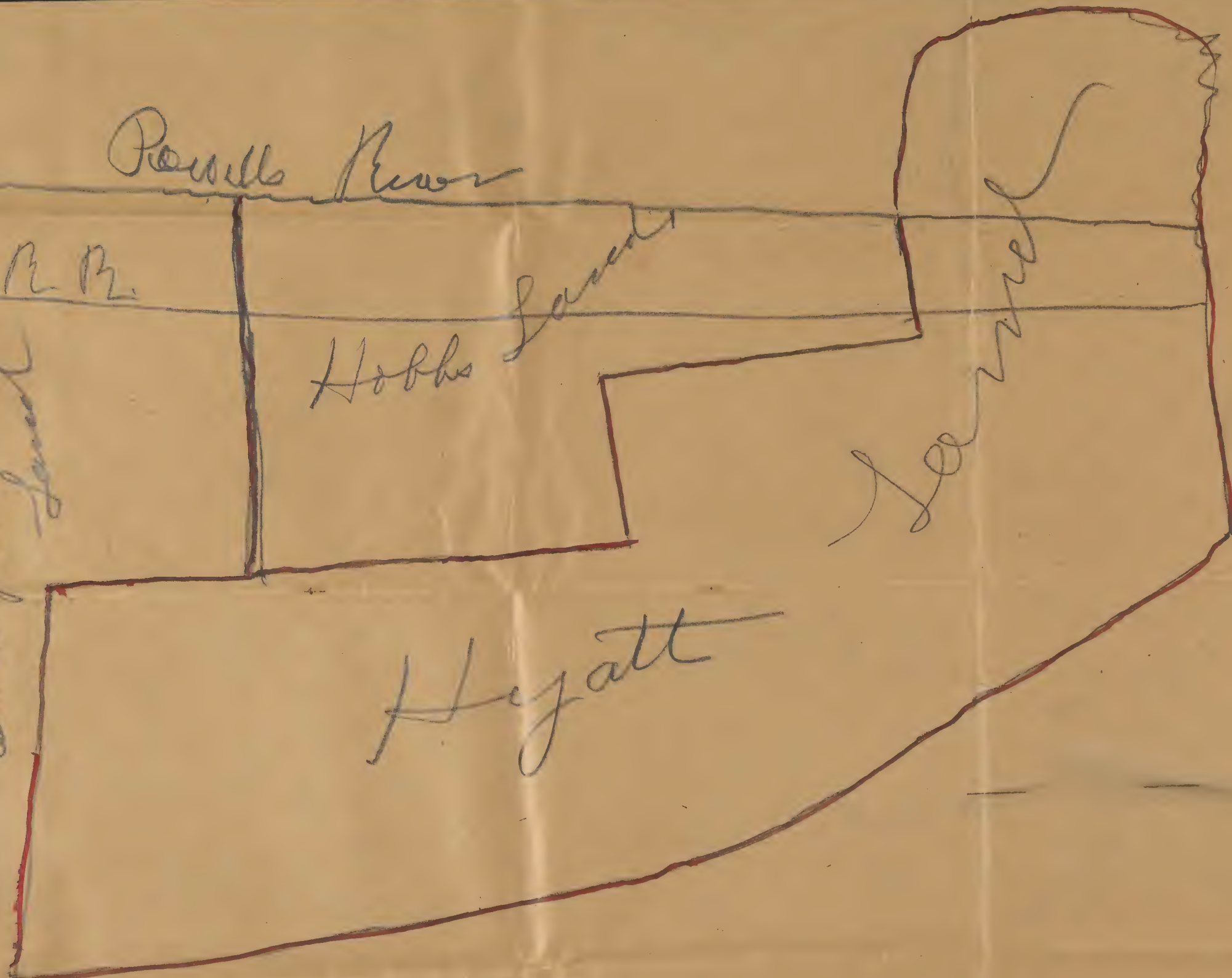
R.R.

Ellington Wells
Land

Hobbs Land

Land

Hayatt



: Zion Hobbs :
: vs. :
: J. O. Chance, Exor. et al. :
:-----

BRIEF FOR CROSS-COMPLAINANT JOHN GILLY.

By a contract in writing, dated March 17th, 1889, Zion Hobbs employed John Gilly, a real estate agent at that time, to sell his (Hobbs') land, and agreed to pay him a commission of ten per cent on the entire purchase price if over sixteen dollars per acre was realized. Shortly thereafter Gilly effected a sale to W. D. Jones at twenty dollars per acre, or \$1200.00. When the conveyance was made March 21st, 1889, Jones paid to Hobbs \$200.00 in cash and executed two notes, one for \$880.00 and the other for \$120.00, both payable on or before five years, and both payable to Zion Hobbs. Instead of then paying to Gilly the commission of \$120.00 to which he was entitled out of the cash received, Hobbs endorsed and assigned the \$120.00 note to Gilly. A year or more later --- Jones having died --- it became known that Jones' estate was insolvent.

April 27th, 1894, Hobbs brought suit in chancery, alleging that by his contract with Gilly the latter was to have sold the land without commission, that he had obtained possession

of the \$120.00 note by fraud, and praying for a foreclosure of the lien reserved to secure the two notes.

Gilly filed his answer and cross-bill, exhibited the written contract, asserted his right to the commission, and prayed that he be decreed to have a first lien on the land and for general relief.

Hobbs, by his attorney, was present in court at the reading of the cross-bill, replied to the argument for Gilly, and must be considered as having entered his appearance to this cross-bill.

On June 13th, 1894, the court entered a decree sustaining Gilly's contention in so far as his right to the \$120.00 note was concerned, giving Hobbs and Gilly each judgment against the executor of Jones, decreeing that both notes were liens on the land, ordering a sale of the land, but giving Hobbs the first lien on the land.

A sale has been held under that decree, at which the land sold for just enough to pay commissions, costs and the entire balance due to Hobbs. That is the \$200.00 paid Hobbs in cash, the \$373.03 paid by the railroad company for a right of way through the land (which Hobbs appropriated), and the amount realized by the commissioner's sale of the land, together make up \$18.00 an acre. And this amount Hobbs will, if the sale is confirmed, have received. It makes no difference that Hobbs was himself the purchaser at the commissioner's sale. The fact remains that the land brought \$514.10 at the sale, and this amount, after payment of commissions and costs, leaves a sum, which added to the \$200.00 and \$373.03, is \$18.00 per acre for the land. And this sum has, or will

on confirmation, go entirely to Hobbs.

At the November 1894 Term no action was taken. The cause now comes up for confirmation of the sale.

Gilly contends 1st that if the sale is confirmed, he is in any event entitled to a judgment against Hobbs for ten per cent of the money received by Hobbs, i.e. ten per cent of \$18. per acre. Second, that he ought to have judgment against Hobbs for the entire commission of ten per cent of \$20.00 per acre (subject to a reduction of \$5.00 for shortage in the acreage); and third, that the decree of June 13th, 1904, was erroneous in that he was not given the first lien on the land and also judgment against Hobbs for the \$120.00 note (less \$8.33).

If error was committed in the decree of June 13th, a proper case for a rehearing is presented. The case is still with the court, and the proper course would be to set aside the sale, and enter a decree correcting the error of the former decree.

I shall first address myself to the question of Gilly's right to the full commission of ten per cent on \$20.00 per acre, and his right to a lien on the land prior to the lien of Hobbs.

I apprehend that the court was led into what I conceive to be error by the thought that if the land on commissioner's sale should bring so little that the total received by Hobbs would be less than \$10.00 an acre, Gilly would be entitled to no commission at all. Hence Gilly was decreed to have a second lien. But this is founded on the idea that a real estate agent is entitled only to commissions on the sums actually re-

ceived by the seller of the land.

Now I understand the law to be that if an agent effects a sale of land at such a price as entitles him to a commission under his contract to a purchaser accepted by the principal, he is entitled to it, if he acted in good faith, although the purchaser subsequently becomes completely insolvent.

In Fitch on Real Estate Agency, p. 124, quoting *Barnard vs. Menet* (42 N.Y.202) it is said:- "The duty of a real estate broker consists in bringing the minds of the vendor and vendee to an agreement at which time he is entitled to his compensation as such broker, whether the contract between the vendor and vendee be reduced to writing or not'. And in another New York case it was held, that it was not necessary to entitle the broker to compensation, that the contract should be in writing, but that 'he is entitled to his commission as soon as he has found a party willing to purchase on the terms which the vendor is willing to accept, and without regard to the question whether he subsequently refused to complete the bargain.' "

Again on page 141 and 142:-

"The contract need not be signed by the principal, so far as the broker's right to commission is concerned, since such signature is not necessary to make the contract binding on the other party.

"But after obtaining and delivering such contract to his principal, without objection on the part of the latter, his duty and obligation ceases. He is not a guarantor of the purchaser, and with ~~the~~ the power vests also in the principal the right of enforcing performance of the contract. This rule

has also the qualification that the broker must act in good faith in the presentation of a purchaser and while he is not bound to prove the responsibility of a purchaser, or his ability to perform his financial engagements, neither, on the other hand, would the broker be justified in presenting as a purchaser one whose pecuniary irresponsibility he designedly concealed from his principal. Such knowledge and concealment would be regarded a fraud upon the principal, and defeat the agent's claim to commission."

See to same effect Koch vs. Quierling 63 U.S. 49 (18-292), in which case, after a sale had been effected the vendor refused to complete the transaction, and the agent sued for his commission. In that case Mr. Justice McLean, for the court, said:-

"Where the vendor is satisfied with the terms, made by himself, through the broker, to the purchaser, and no solid objection can be stated, in any form, to the contract, it would seem to be clear that the commission of the agent was due and ought to be paid. It would be a novel principle if the vendor might capriciously defeat his own contract with his agent by refusing to pay him when he had done all that he was bound to do."

To same effect see Hart vs. Hoffman, 44 How., Pr., 168; Hauge vs. O'Connor, 41 How.Pr. 297; 1 Sweeny 472; and 21 Barb. 445.

In the note to McGarvie vs. Woodlief, 61 U.S. 221 (15-384) it is said:

"A real estate broker, who has procured a purchaser on the vendor's terms, is entitled to the agreed commissions,

notwithstanding the failure of the purchaser to perform x x x
if not caused by the fraud or deception of the broker." Wi-
ling 35 N.Y. Supr. 543; and 35 N.Y. Supr. 452. Again in the same
notes it is said:

"In an action by a real estate broker for compensation
for his services, evidence of defects in the title is inadmis-
sible (7 Daly 13). He is entitled to his commissions though
the purchaser is relieved from his purchase by the court on
account of a defect of title. 14 Week. Dig. 257."

In Vinton vs. Baldwin (33 Ind. 104) 45 Amer. Rep. 447, Bal-
win employed Vinton to procure a loan and agreed to pay "for
his services 5 % on the amount of the loan obtained." Vinton
procured parties who offered to make the loan. Baldwin then
decided not to take the loan. Vinton sued for his commission.
The court said:

"In principle the case of a broker negotiating
a loan is the same as that of a broker negotiating a sale of
property, and in the latter case it is uniformly held that the
commissions are earned when a purchaser is found able and will-
ing to buy on the terms proposed. In such cases the bro-
ker's right to compensation is held to accrue when he has fur-
nished a purchaser, and does not depend upon the ultimate con-
summation of the sale."

In Love vs. Miller (53 Ind. 241), 21 Amer. Reports, 192,
in which after the agent had found a purchaser for the land,
the vendor declined to sell. The agent sued for his commis-
sion. The court said:-

"We are of opinion that when the broker has effected a
bargain and sale, by a contract which is mutually obligatory

on the vendor and vendee, he is entitled to his commission, whether his employer chooses to comply with or enforce the contract or not. The following authorities support us in our conclusion: Cook v. Miske, 12 Gray, 401; Dunn v. Newman, 39 Mass. 256; Middleton v. Findla, 25 Cal. 73; Knapp v. Wallace, 11 N.Y. 177; Stillman v. Mitchell, 2 Rob. (N.Y.) 523; Riggins v. Moore, 34 N.Y. 417; Heinrich v. Korn, 1 Daly, 74; Pico v. Mayo, 107 Cal. 550; Mooney v. Elder, 53 N.Y. 232; Barnard v. Mannot, 3 Jones 203; Chapin v. Bridges, 11 Mass. 105.

The case of Peters vs. Anderson, 22 Va. 1051, does not militate against my position.

In that case the receiver of an insolvent National Bank which owned real estate, knowing that a proposing purchaser had been sent to him by Anderson, a real estate broker, "recommended to the Comptroller of the currency an allowance of ten per cent from the purchase money when the sale was paid."

The court held that as there was no positive agreement on the subject, it was not equitable that the agent should have his per centum on the part of the purchase price which was defaulted. It was a chancery proceeding, in which the court took the view that the agent ought to have a reasonable compensation for the actual benefit accruing from his services to his principal. But the very basis of the opinion is the entire want of an agreement between the parties as to the payment of a commission.

Now in our case we have an agreement to pay a commission, which was at the time construed by the parties to it to mean payment at the time the sale was effected, and hence of course the commission was intended to be on the actual selling price

and not on the money when it was paid. When the sale was made, Hobbs then and there endorsed and gave to Gilly as his commission the \$120.00 note. This act of the parties finally construes their contract, and shows that they understood it to mean that Gilly was to have his commission on the purchase price, and at the time of sale.

It was in effect Hobbs saying to Gilly --- "Here, you have earned your commission of \$120.00. I do not want to pay you in cash, but I will give you a lien note which I will endorse." Suppose Hobbs had then paid Gilly \$120.00 in cash. Could he now recover back any part of it (except the \$8.69 for shortage of acreage)? Clearly he could not. The payment in cash at the time would have been a conclusive admission that the commission was then earned. So, also, endorsing the note is a definite admission as to the meaning of the contract of agency.

Consequently I conceive that the Virginia case is not in point and is not contrary to the general doctrine, that under a contract like ours an agent's work is complete when the sale is effected, and that he is not a guarantor of the purchaser.

It is not contended but that Gilly acted in good faith in securing Jones as a purchaser. It appears that at that time he and the community in general regarded Jones as abundantly solvent. Hobbs accepted Jones as the purchaser. Gilly's work was complete when the deed was delivered. He was then entitled to his commission of 10 per cent on the \$1200.00 purchase price --- which was \$20. per acre --- and was entitled to it in cash. He took, however, a note for it. The \$120.00 note was executed by Jones to Hobbs, and by Hobbs en-

dorsed to Gilly. As Hobbs then by law owed Gilly this sum, Gilly's rights are clearly those of an assignee of a duly endorsed lien note. Had Jones made the \$100.00 note payable directly to Gilly, and if Gilly had accepted it, I concede that Hobbs might have been released from personal liability; but Gilly's lien would have been of equal dignity with Hobbs' lien. But as it was done, Gilly has an assignee's rights as to the lien on the land --- that is, a priority of payment out of the land --- and besides has a personal claim against Hobbs, because of Jones' insolvency.

It seems to me, therefore, that the court should refuse to confirm the sale, and should decree that Gilly and Hobbs both recover against Chance, Exor.; that Gilly has a first lien on the land and Hobbs a second lien; that in event the land does not bring sufficient to pay all commissions, costs and Gilly's debt, a decree over against Hobbs be given to Gilly. This course, and this alone, would correct the error of the former decree.

If, however, the court should still hold that Gilly is only entitled to commission on the amount received by Hobbs, then, on the sale being confirmed, I insist that Gilly is entitled in this cause to a personal judgment against Hobbs for ten per cent of the sums received by Hobbs. The contract was for ten per cent of the whole price if a sale was effected at anything above \$18.00 an acre. Hobbs has by the sale received \$18.00 an acre. That Gilly is entitled to such a decree in this case is clear. If the court simply confirms the sale, and does not give such a judgment against Hobbs, the result would be that Hobbs has realized \$18.00 an acre out of

sale effected by Gilly, while the latter gets nothing but an empty judgment against an insolvent estate. Now can it be answered that Gilly would still have his rights at law. It he should sue Hobbs, either on the original contract, or on the \$120.00 note, the plea of res judicata would lie. In this chancery cause Gilly has filed his cross-bill and prayed for general relief. That raised and put in issue his right to payment from Hobbs, and if this case takes the course contended for by the other side, it can well be said that our claim has been adjudicated.

And whether the plea of res judicata would lie to our subsequent action against Hobbs or not, it is contrary to the practice of equity courts to refuse to make a complete settlement of the rights of parties once properly before the chancellor.

If the court should merely confirm the sale made by the commissioner, and not give Gilly a judgment against Hobbs, it would in effect decide that Gilly (whose contract was with Hobbs, and who got a note endorsed by Hobbs) must look alone to Jones for payment. Such a decree would totally disregard the liability incurred by Hobbs to Gilly when the former endorsed and assigned to the latter the Jones note.

If the agent were by law only entitled to a commission on the amount received by the vendor, the decree of June 16th, 1894, so far as it goes, would be right. And the land having sold for enough to entitle Gilly to ten per cent on at least \$18.00 an acre, and not for enough to satisfy any part of Gilly's claim against Hobbs, the court ought now to render a personal decree in Gilly's favor against Hobbs for that amount.

But by all the authorities, Gilly had a complete right to \$120.00 (less shortage of \$8.65) the day Hobbs assigned to him the \$120.00 note. As this was a lien note, in Hobbs' hands of equal dignity with the \$880.00 note, on its being assigned to Gilly, the latter got a prior lien on the land, and to do complete justice, the court, as it seems to me, ought to set aside the sale, give Gilly his first lien, order a resale, and if then Gilly's claim is not fully satisfied, give him a personal decree against Hobbs for the deficiency.

Respectfully submitted
H. C. McDowell, Jr.
Counsel

Lee Circuit Court

Oliver Hobbs.
vs. In Chancery

J. C. Chance, Exor, et al
Brief for Cross Complainant.
John Gilley,
counsel for

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

J. C. Chance Ec of W. D. Jones decd
Catherine B. Jones John W. Jones, Nancy E. Allen, J. C. Allen, W. J.
Learmack, B. D. Jones, John Jones, Roena Jones, Lula Jones, Mary James
W. W. James and John Gilley

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *3rd* Monday in *May*, 189*4*, to answer a bill in Chancery, exhibited against *them* in our said court by *Yion Hobbs*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the *27th* day of *April* 189*4*, and in the 11*8th* year of the Commonwealth.

A. B. Munsey Clerk.

Yion Hobbs

VS. { SUBPENA
IN CHANCERY.

J. C. Chance & Co. et al

H. A. W. Skeen p. q.

To *2nd May* Rules,

Circuit Court.

Executed May
the 9th 1894 by
Delivering a true
office copy of
the within to
John Gilly
this May 10 1894
L. M. Wade D. S.
for R. C. Flannery
S. L. C.

The Commonwealth of Virginia,

John
Sergeant of Bristol ~~County~~
To the ~~Sheriff of the County of Lee~~, Greeting:

WE COMMAND YOU, That you summon

J. C. Chance Exr. of W. D. Jones deed
Catherine B. Jones, John M. Jones, Nancy E. Allen, J. C. Allen
W. J. Carmack, B. D. Jones, John Jones, Roena Jones, Eula Jones
Mary James, W. W. James and John Gilley

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *3rd* Monday in *May*, 1894, to answer a bill in Chancery, exhibited against *them* in our said court by *Zion Hobbs*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the *27th* day of *April*, 1894, and in the 11 *8th* year of the Commonwealth.

A B Munsey Clerk.

Yion Hobbs

US. { SUBPENA
IN CHANCERY.

J. L. Chance & Co. et al

H. A. W. Skeen p. q.

To 2nd May Rules,

Circuit Court.

Executed by delivering
a true copy of the within
summons to W. W. James
in the City of Bristol Va.
May 5th 1894 also executed
by delivering a true copy
of the within summons
to Mary James in the
City of Bristol Va. on this
8th day of May 1894

John H. Rose
Sergeant
Bristol
Va.

(Supt. fee Paid)
8/20

Order of Publication Certificate.



Paste copy here.

vs.

Publisher's fixed rate of
charges: 5 cents per line
for each insertion.

Amount of this order, \$ 5.00

Paid by *N. O. W. Sken*

I the Clerk's Office of the Circuit Court of the
County of Lee on the 23 day of April, 1894.
Zion Hobbs, Plaintiff,
against
J. C. Chance, Exr., &c. et al, Df'rs. In Chancery.
The object of this suit is to recover of J. C. Chance,
Exr. of W. D. Jones, deceased, \$927.80, with interest
from March 21st, 1894, and foreclose a vendor's lien
retained in a deed dated March 21st, 1889, from Zion
Hobbs and wife to Wm. D. Jones, upon a tract of
land in Lee County, Virginia, containing sixty acres,
more or less. And an affidavit having been made and
filed that the defendants, J. C. Chance, Exr. of Wm.
D. Jones, deceased, Catherine B. Jones, John M.
Jones, Nancy E. Allen, J. G. Allen,
W. J. Carmack, B. D. Jones, John Jones, Roena
Jones and Eula Jones are not residents of the
State of Virginia, it is ordered that they do appear here,
within fifteen days after due publication hereof, and
do what may be necessary to protect their interest in
this suit. And it is further ordered that a copy
hereof be published once a week for four weeks in
the Big Stone Gap Post, and that a copy be posted at
the front door of the court-house of this county on
the first day of the next term of the County Court.
A copy—Teste: A. B. MURSEY, Clerk.
H. A. W. SKEEN, p. q. May 8 1894

J. E. Hayes

I, ~~C. M. Harris~~, editor and publisher of the Big Stone Gap Post, a weekly
newspaper published in the town of Big Stone Gap, Wise County, Virginia, do
certify that the foregoing Order of Publication was duly published in the said
newspaper for four consecutive weeks commencing on the 3rd day of May, 1894

J. E. Hayes, Pub. & Manager
Editor the Big Stone Gap Post.

Clerk's Office Circuit Court for Wise County, Va.

I, _____, Clerk of the Circuit Court for Wise county, Vir-
ginia, hereby certify that I, on the first day of the County Court of Wise county,
at the _____ term, 189 _____ thereof, posted a copy of the foregoing Order of
Publication at the front door of the court-house of the said county. Given under
my hand, this _____ day of _____, 189 _____.

Clerk Wise County Circuit Court.

I hereby certify that
I posted a copy of the
within order of Pub
at the front door of the
Court house on the 1st
day of the May term
~~1874~~ of the County Court
1894
A B Munsey Ck

Order of
PUBLICATION
Certificates.

vs {

Publisher's Fee \$5,00

Paid by H. A. W. Steen.

Plffs Costs

C 7.64

S 1.50

Printer 5.00

County Ct 00

1414

Defts Costs

C 65-

Guard 500

15.00

atty

Court

Zion Hobbs

vs } Bill in Chancery

J. C. Chance & Co et al

Hand to Judge
Miller

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final See day order
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